

AMENDED IN SENATE AUGUST 20, 2009  
AMENDED IN SENATE FEBRUARY 14, 2009  
AMENDED IN ASSEMBLY JANUARY 7, 2009

CALIFORNIA LEGISLATURE—2009–10 THIRD EXTRAORDINARY SESSION

## ASSEMBLY BILL

**No. 14**

**Introduced by Assembly Member Evans Arambula**  
*(Principal coauthor: Senator Ducheny)*

January 5, 2009

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~~An act to amend Sections 15819.40, 15819.402, 15819.403, 15819.404, 15819.41, 15819.412, 15819.414, 15819.417, 15820.903, 15820.911, and 15820.913 of, and to add Sections 15820.904 and 15820.914 to, the Government Code, to amend Section 7021 of the Penal Code, and to amend Sections 1970, 1971, 1972, 1973, and 1975 of, and to add Section 1977 to, the Welfare and Institutions Code, relating to correctional facilities, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately. An act to amend Sections 7027.3, 14491, 17550.19, and 21653 of the Business and Professions Code, to amend Section 25541 of the Corporations Code, to amend Section 5305 of the Financial Code, to amend Sections 11105, 11150.6, 11153, 11162.5, 11162.6, 11350, 11351, 11351.5, 11352, 11352.1, 11353, 11353.1, 11353.4, 11353.5, 11353.6, 11353.7, 11354, 11355, 11356.5, 11357, 11358, 11359, 11360, 11361, 11363, 11364.7, 11366, 11366.5, 11366.6, 11366.7, 11366.8, 11368, 11370, 11370.1, 11370.2, 11370.4, 11370.6, 11370.9, 11371, 11371.1, 11372, 11374, 11374.5, 11375, 11377, 11378, 11378.5, 11379, 11379.2, 11379.5, 11379.6, 11379.7, 11379.8, 11379.9, 11380, 11380.1, 11380.7, 11382, 11383, 11383.5, 11383.6, 11383.7, 11390, 11391, 11536, and 11550, of the Health and Safety Code, to amend Section 11880 of the Insurance Code, to amend Section 421 of the Military and Veterans~~

*Code, to amend Sections 18, 19, 72, 72.5, 115.1, 126, 148.1, 154, 155, 182, 186.10, 186.11, 191.5, 193, 193.5, 204, 205, 208, 209, 209.5, 210, 210.5, 213, 214, 215, 220, 222, 236.1, 237, 241, 241.1, 241.2, 241.3, 241.4, 241.6, 241.7, 241.8, 243, 243.10, 243.2, 243.25, 243.3, 243.35, 243.4, 243.6, 243.7, 243.8, 243.9, 244, 244.5, 245, 245.2, 245.3, 245.5, 245.6, 246, 246.3, 247, 247.5, 261.5, 264, 264.1, 266, 266a, 266b, 266c, 266d, 266e, 266f, 266g, 266h, 266i, 266j, 266k, 267, 269, 270, 271, 271a, 272, 273a, 273ab, 273d, 273.4, 273.5, 273.6, 273.65, 278, 278.5, 280, 285, 286, 286.5, 288, 288a, 288.2, 288.4, 288.5, 288.7, 289, 289.5, 289.6, 311.1, 311.2, 311.3, 311.4, 311.5, 311.6, 311.7, 311.9, 311.10, 311.11, 313.4, 314, 327, 337.4, 350, 368, 380, 381, 381b, 422, 422.7, 422.75, 451, 451.1, 451.5, 452, 452.1, 453, 454, 455, 456, 461, 462, 462.5, 463, 470a, 470b, 473, 474, 476a, 478, 479, 481, 481.1, 483.5, 484b, 484g, 484h, 484i, 487, 487b, 487c, 487d, 487e, 487f, 487g, 487h, 488, 489, 490, 490.1, 490.5, 490.7, 496, 496a, 496d, 498, 499, 499b, 499c, 499d, 500, 502, 502.7, 502.8, 506b, 520, 524, 529a, 530.5, 532a, 535, 537, 537e, 538.5, 549, 550, 551, 560, 560.4, 565, 566, 570, 577, 578, 580, 581, 587, 591, 592, 593d, 594.35, 594.4, 641.3, 646.9, 664, 666, 666.5, 667.10, 667.15, 667.16, 667.17, 667.5, 667.51, 667.6, 667.61, 667.7, 667.71, 667.75, 667.8, 667.85, 667.9, 668, 674, 675, 2932, 2933, 2933.2, 2933.3, 2933.5, 2933.6, 2934, 2935, 3000, 4019, 4532, 4600, 12022, 12022.1, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95 of, to amend and renumber Section 2933.4 of, to add Sections 1170.05, 2933.05, and 3003.5 to, to add Article 2.3 (commencing with Section 3015) to Chapter 8 of Title 1 of Part 3 of, to add Title 6.5 (commencing with Section 4950) to Part 3 of, and to add and repeal Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of, the Penal Code, to amend Sections 14591 and 41955 of the Public Resources Code, to amend Section 19706 of the Revenue and Taxation Code, to amend Sections 4463, 10801, 10802, 10803, 10851, 10851.5 and 42002.4 of the Vehicle Code, and to amend Sections 10980 and 15656 of the Welfare and Institutions Code, relating to corrections.*

## LEGISLATIVE COUNSEL'S DIGEST

AB 14, as amended, ~~Evans Arambula. Prison facilities: construction. Corrections.~~

*Existing law prescribes various penalties for criminal offenses.*

*This bill would state legislative findings and declarations regarding criminal sentencing laws and policies. This bill would create the California Public Safety Commission, chaired by the Chief Justice of the California Supreme Court, and comprised as specified, to develop and implement a new sentencing system, that would develop rules for sentences imposed for infractions, misdemeanors, alternate felonies or misdemeanors, and felonies, and rules for parole. The commission also would be required to make recommendations to the Legislature regarding criminal laws established by voter initiative, prepare correctional population projections for the sentencing system, serve as a resource for sentencing policy, develop information systems to track criminal cases entering the courts, assemble information on the effectiveness of sentences imposed, and investigate the existence of discrimination or inequities in the sentencing and corrections systems, as specified.*

*Any rules promulgated by the commission would take effect on January 1 of the year following the year that the commission presents the rules to the Legislature, if the Legislature does not reject the rules by a statute that is passed by a majority vote of each house of the Legislature and signed by the Governor. Any rule that is rejected by the Legislature would not take effect.*

*This bill would amend various sections of the codes that currently impose a sentence for a crime by providing that crime would be punishable, alternatively, on or after the operative date of any applicable sentencing rules proposed by the commission, as provided in those rules. Because the bill would authorize a state agency to change the punishment for several crimes, the bill would impose a state-mandated local program.*

*Existing law establishes certain values for determining if theft or certain other property crimes are punishable as felonies or not. Existing law provides that for many of these crimes, the threshold is \$400, while the thresholds for certain other crimes are \$100, \$200, and \$1,000, as specified.*

*This bill would increase those thresholds uniformly, for example, by increasing the \$400 threshold to \$950, except for certain provisions relating to grand theft, for which the threshold would be increased to \$2,500.*

*Existing law establishes various offenses punishable as felonies or misdemeanors.*

*This bill would provide that specified offenses, including certain offenses related to drugs and theft, committed on or after the date the bill becomes operative shall only be punished as misdemeanors, subject to any operative sentencing rule of the sentencing commission, as specified.*

*Existing law makes it a misdemeanor or a felony to take or drive another person's vehicle without the owner's consent, as specified.*

*This bill would make it a misdemeanor or a felony if the value of the car is more than \$2,500 and a misdemeanor if the value of the car is not more than \$2,500.*

*By increasing local incarceration costs, this bill would impose a state-mandated local program.*

*Because this bill would change the definitions of various crimes, it would impose a state-mandated local program.*

*Existing law provides a system of prisons under the Department of Corrections and Rehabilitation to house inmates committed to state prison for felonies.*

*This bill would authorize the Secretary of the Department of Corrections and Rehabilitation to offer a program under which inmates committed to state prison may be allowed to participate in a voluntary alternative custody program in lieu of confinement in state prison. The bill would define an alternative custody program to include confinement to a residential home, a residential drug or treatment program, or a transitional care facility during the hours designated by the Department of Corrections and Rehabilitation. The bill would, among other things, provide inmate eligibility criteria, authorize the secretary to prescribe rules and regulations for the program, including making an unauthorized departure or failure to return as required a crime, impose certain inmate participation requirements, and authorize certain verification procedures.*

*Existing law provides for a 6-month reduction in a prisoner's term of confinement for every 6 months of full-time performance by the prisoner in a qualified work, training, or education program, as specified. Existing law provides that for every 6 days served in a specified local detention center following an arrest and prior to the imposition of a prison sentence for a felony conviction, 2 days shall be deducted from his or her period of confinement, as specified.*

*This bill would instead provide that certain prisoners shall earn one day of credit for every one day served either in the state prison or in a local facility prior to delivery to the state prison. This bill would provide*

*for up to 6 weeks of additional credit for the successful completion of certain programs offered by the department, as specified. This bill would also expand an existing program for extra time credits for inmates assigned to conservation camps to apply to inmates who are assigned to correctional institutions as inmate firefighters and to inmates who have completed the training for either of those assignments, as specified. This bill would also revise the time credits for certain prisoners confined or committed to a county jail or other specified facilities, as provided.*

*This bill would also provide criteria for the denial and loss of these credits, and would make various conforming and technical changes.*

*Existing law establishes provisions authorizing the department to oversee programs for the purposes of reducing parolee recidivism.*

*This bill would authorize each county to establish a Community Corrections Performance Incentives Fund (CCPIF) and would authorize the state to annually allocate money into a State Corrections Performance Incentives Fund to be used for certain purposes relating to improving local probation supervision practices and capacities, as specified. This bill would require the Director of Finance, in consultation with the Department of Corrections and Rehabilitation, the Joint Legislative Budget Committee, the Chief Probation Officers of California, and the Administrative Office of the Courts, to make various calculations relating to the costs of incarceration, probation failure rates, and estimated numbers of adult felony probationers who are successfully prevented from being sent to prison per county, as specified. This bill would require the Department of Finance, in consultation with other specified agencies, to annually calculate 5% of the savings to the state attributed to those counties that successfully reduce the number of adult felony probationers sent to prison, and the bill would authorize those savings to be used to provide high performance grants to county probation departments to reduce recidivism among adult felony probationers. This bill would also require each county using CCPIF funds to identify and track specific outcome-based measures, as specified, and report to the Administrative Office of the Courts on the effectiveness of the programs paid for by the CCPIF.*

*This bill would require each county's community corrections programs to be developed and implemented by the probation department, as advised by a local Community Corrections Partnership. This bill would require specified local officials to serve as part of that Community Corrections Partnership. Because this bill would increase*

*the duties for certain local officials, it would impose a state-mandated local program.*

*Existing law requires an inmate under the custody of the Department of Corrections and Rehabilitation, who has successfully completed an in prison drug treatment program, to be entered into a 150-day residential aftercare drug treatment program upon release from state prison, whenever possible, as specified. Existing law excludes from those drug treatment programs inmates who are currently serving or have served a prior indeterminate sentence or who have been sentenced for a violent felony, a serious felony, or a crime requiring registration as a sex offender.*

*This bill would remove serious felonies from the above exclusion, and would thereby make inmates serving sentences for serious felonies eligible for residential aftercare drug treatment programs who are not otherwise precluded.*

*Existing law requires the Department of Corrections and Rehabilitation to release a prisoner on a specified period of parole after the expiration of a specified term of imprisonment. Under existing law, the department is authorized to return a parolee to prison if the Board of Parole Hearings determines that the parolee violated the terms of his or her parole, as specified.*

*This bill would prohibit the department from returning certain parolees to prison, placing a parole hold on the parolee, or reporting the parolee to the Board of Parole Hearings for a violation of parole, as specified.*

*Existing law requires the Department of Corrections and Rehabilitation to establish certain pilot programs to assist parolees in the successful reintegration of those parolees into the community.*

*This bill would require the Secretary of the Department of Corrections and Rehabilitation to establish a parole reentry accountability program for parolees who have been sentenced to a determinate term of imprisonment. The bill would require the department to employ a parole violation decisionmaking instrument to determine the most appropriate sanctions for parolees who violate their parole conditions. The bill would require the department to adopt regulations that make appropriate changes in policies and procedures to reflect the bill's intent.*

*The bill would also authorize the department to refer these parolees, if they have a history of substance abuse or mental illness and violate their parole conditions, to a reentry court program. The bill would*

*require the secretary, subject to available funding, to enter into a memorandum of understanding with the Administrative Office of the Courts for the purpose of the establishment and operation of parolee reentry programs, as specified.*

*The bill would require the Judicial Council, in collaboration with the department, to design and perform an evaluation of the program to assess its effectiveness in reducing recidivism among parolees and reducing parole revocations. The bill would also require the Judicial Council, in collaboration with the department, to submit a final report of its findings to the Legislature and the Governor, as specified.*

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.*

*With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.*

~~Existing law, the Public Safety and Offender Rehabilitation Services Act of 2007, requires the Department of Corrections and Rehabilitation to design, construct, or renovate prison housing units, prison support buildings, and programming space in order to add approximately 7,484 beds at specified adult correctional facilities, and authorizes the department to develop approximately 12,000 new prison beds overall, including appropriate programming space, and to acquire land, design, construct, and renovate reentry program facilities, and to construct and establish new buildings at facilities under the jurisdiction of the department to provide medical, dental, and mental health treatment or housing for 6,000 inmates, as specified.~~

~~This bill instead would remove the limitation on the number of beds that are required to be constructed at specified facilities, while maintaining the 12,000 bed maximum, and would delete the word “prison” from the types of facilities that are affected by the bill and replace it with “facilities under the jurisdiction of the department.”~~

~~Existing law authorizes the State Public Works Board to issue revenue bonds or notes for purposes of financing these projects, as specified. Existing law also provides that funds derived from interim financing, bonds, or notes issued for this purpose are continuously appropriated~~

to the board on behalf of the department for purposes of specified prison construction. Existing law authorizes the board to borrow funds for project costs from the Pooled Money Investment Account.

This bill would add acquisition and design as project costs for which the board may borrow funds from the Pooled Money Investment Account. The bill would also provide that preliminary expenditures to develop the scope, budget, programming, and scheduling for a project would be reimbursable from the proceeds of the revenue bonds. The board would be allowed to issue bonds or notes to finance the acquisition of specified projects. The amount of bonds or notes to be sold would be required to include the cost of acquisition of the facilities and other costs related to acquisition of the facilities. Because the bill would authorize additional uses of continuously appropriated funds, the bill would constitute an appropriation.

Under existing law, the amount of revenue bonds or notes to be sold is required to equal certain costs, including interim financing and a reasonable reserve.

This bill, instead, would authorize the amount of bonds and notes to include those items:

Existing law provides that eligible counties that choose to finance a local youthful offender rehabilitative facility with money from this act are responsible for the acquisition, design, construction, staffing, operation, repair, and maintenance of those facilities.

This bill would also require those counties to be responsible for the renovation of those facilities.

The bill would make related conforming changes.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. The Governor issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 19, 2008.

This bill would state that it addresses the fiscal emergency declared by the Governor by proclamation issued on December 19, 2008, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ -majority. Appropriation: ~~yes~~-no. Fiscal committee: yes. State-mandated local program: ~~no~~-yes.



*The people of the State of California do enact as follows:*

1     *SECTION 1. Section 7027.3 of the Business and Professions*  
2     *Code is amended to read:*

3     7027.3. (a) Any person, licensed or unlicensed, who willfully  
4     and intentionally uses, with intent to defraud, a contractor's license  
5     number that does not correspond to the number on a currently valid  
6     contractor's license held by that person, is punishable by a fine  
7     not exceeding ten thousand dollars (\$10,000), or by imprisonment  
8     in state prison, or in a county jail for not more than one year, or  
9     by both that fine and imprisonment. The penalty provided by this  
10    section is cumulative to the penalties available under all other laws  
11    of this state. If, upon investigation, the registrar has probable cause  
12    to believe that an unlicensed individual is in violation of this  
13    section, the registrar may issue a citation pursuant to Section  
14    7028.7.

15    (b) *Alternatively, on or after the operative date of an applicable*  
16    *rule or rules proposed by the California Public Safety Commission,*  
17    *a person who violates this section shall be punished as provided*  
18    *in the applicable sentencing rules.*

19    *SEC. 2. Section 14491 of the Business and Professions Code*  
20    *is amended to read:*

21    14491. The violation of any of the provisions of this article is  
22    a misdemeanor, except that if the violation consists of unlawfully  
23    using, selling, or secreting in any place supplies of a value  
24    exceeding ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars*  
25    (\$950), the violation is a felony.

26    *SEC. 3. Section 17550.19 of the Business and Professions Code*  
27    *is amended to read:*

28    17550.19. In addition to any civil penalties provided in this  
29    division, violation of this article is punishable as follows:

30    (a) As a misdemeanor by a fine of not more than ten thousand  
31    dollars (\$10,000), by imprisonment in a county jail for not more  
32    than one year, or by both that fine and imprisonment for each  
33    violation.

34    (b) In addition, any violation of Section 17550.14 or subdivision  
35    (b) or (c) of Section 17550.15 where money or real or personal  
36    property received or obtained by a seller of travel for transportation  
37    or travel services from any and all persons aggregates ~~one thousand~~  
38    ~~dollars (\$1,000)~~ *two thousand three hundred fifty dollars (\$2,350)*

1 or more in any consecutive 12-month period, or the payment or  
2 payments by or on behalf of any one passenger exceeds in the  
3 aggregate ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars*  
4 *(\$950)* in any 12-month period, is punishable either as a  
5 misdemeanor or as a felony by imprisonment in the state prison  
6 for 16 months, or two or three years, by a fine of not more than  
7 twenty-five thousand dollars (\$25,000), or by both that fine and  
8 imprisonment for each violation.

9 (c) In addition, any intentional use for any purpose of a false  
10 seller of travel registration number, with intent to defraud, by an  
11 unregistered seller of travel is punishable as a misdemeanor or  
12 felony as provided in this section.

13 (d) Any violation of Section 17550.15 shall be a misdemeanor  
14 and shall be punished as provided in this section. Every act in  
15 violation of Section 17550.15 may be prosecuted as a separate and  
16 distinct violation and consecutive sentences may be imposed for  
17 each violation.

18 (e) Sellers of travel shall also comply with Sections 17537,  
19 17537.1, and 17537.2 of the Business and Professions Code and  
20 all other applicable laws. This section shall not be construed to  
21 preclude the applicability of any other provision of the criminal  
22 law of this state that applies or may apply to any transaction.

23 *SEC. 4. Section 21653 of the Business and Professions Code*  
24 *is amended to read:*

25 21653. Every junk dealer or secondhand dealer who resells  
26 any item acquired in violation of Section 21652 is guilty of a  
27 felony, if the value of the item exceeds ~~four hundred dollars (\$400)~~  
28 *nine hundred fifty dollars (\$950)*, and is guilty of a misdemeanor  
29 if the value of the item does not exceed ~~four hundred dollars (\$400)~~  
30 *nine hundred fifty dollars (\$950)*.

31 *SEC. 5. Section 25541 of the Corporations Code is amended*  
32 *to read:*

33 25541. (a) Any person who willfully employs, directly or  
34 indirectly, any device, scheme, or artifice to defraud in connection  
35 with the offer, purchase, or sale of any security or willfully  
36 engages, directly or indirectly, in any act, practice, or course of  
37 business which operates or would operate as a fraud or deceit upon  
38 any person in connection with the offer, purchase, or sale of any  
39 security shall upon conviction be fined not more than ten million  
40 dollars (\$10,000,000), or imprisoned in the state prison for two,

1 three, or five years, or be punished by both that fine and  
2 imprisonment.

3 (b) Any issuer, as defined in Section 2 of the Sarbanes-Oxley  
4 Act of 2002 (Public Law 107-204), who willfully violates  
5 subdivision (a) shall upon conviction be fined not more than  
6 twenty-five million dollars (\$25,000,000), or imprisoned in the  
7 state prison for two, three, or five years, or be punished by both  
8 that fine and imprisonment.

9 (c) *Alternatively, on or after the operative date of an applicable*  
10 *rule or rules proposed by the California Public Safety Commission,*  
11 *a person who violates this section shall be punished as provided*  
12 *in the applicable sentencing rules.*

13 *SEC. 6. Section 5305 of the Financial Code is amended to*  
14 *read:*

15 5305. Any institution-affiliated party who abstracts or willfully  
16 misapplies any of the money, funds, or property of the savings  
17 association, or willfully misapplies its credit, is guilty of a felony  
18 and shall be punished by a fine of not more than one million dollars  
19 (\$1,000,000), by imprisonment in the state prison for 2, 3, or 4  
20 years, or by both that fine and imprisonment. However, if the  
21 amount abstracted or willfully misapplied does not exceed ~~one~~  
22 ~~hundred dollars (\$100)~~ *two hundred fifty dollars (\$250)*, the offense  
23 shall instead be punishable by a fine of not more than one thousand  
24 dollars (\$1,000), by imprisonment in the county jail for not more  
25 than one year or in the state prison, or by both that fine and  
26 imprisonment.

27 *SEC. 7. Section 11105 of the Health and Safety Code is*  
28 *amended to read:*

29 11105. (a) It is unlawful for any person to knowingly make a  
30 false statement in connection with any report or record required  
31 under this article.

32 (b) (1) Any person who violates this section shall be punished  
33 by imprisonment in the state prison, or by imprisonment in the  
34 county jail not exceeding one year, or by a fine not exceeding five  
35 thousand dollars (\$5,000), or by both such fine and imprisonment.

36 (2) Any person who has been previously convicted of violating  
37 this section and who subsequently violates this section shall be  
38 punished by imprisonment in the state prison for two, three, or  
39 four years, or by a fine not exceeding one hundred thousand dollars  
40 (\$100,000), or by both such fine and imprisonment.

1     (3) *Alternatively, on or after the operative date of an applicable*  
2 *rule or rules proposed by the California Public Safety Commission,*  
3 *a first or subsequent violation of this section is punishable as*  
4 *provided in the applicable sentencing rules.*

5     SEC. 8. *Section 11150.6 of the Health and Safety Code is*  
6 *amended to read:*

7     11150.6. Notwithstanding Section 11150.5 or subdivision (a)  
8 of Section 11054, methaqualone, its salts, isomers, and salts of its  
9 isomers shall be deemed to be classified in Schedule I for the  
10 purposes of this chapter *or, on or after the operative date of an*  
11 *applicable rule or rules proposed by the California Public Safety*  
12 *Commission, they shall be included in the schedule provided in*  
13 *the applicable sentencing rules.*

14     SEC. 9. *Section 11153 of the Health and Safety Code is*  
15 *amended to read:*

16     11153. (a) A prescription for a controlled substance shall only  
17 be issued for a legitimate medical purpose by an individual  
18 practitioner acting in the usual course of his or her professional  
19 practice. The responsibility for the proper prescribing and  
20 dispensing of controlled substances is upon the prescribing  
21 practitioner, but a corresponding responsibility rests with the  
22 pharmacist who fills the prescription. Except as authorized by this  
23 division, the following are not legal prescriptions: (1) an order  
24 purporting to be a prescription which is issued not in the usual  
25 course of professional treatment or in legitimate and authorized  
26 research; or (2) an order for an addict or habitual user of controlled  
27 substances, which is issued not in the course of professional  
28 treatment or as part of an authorized narcotic treatment program,  
29 for the purpose of providing the user with controlled substances,  
30 sufficient to keep him or her comfortable by maintaining customary  
31 use.

32     (b) Any person who knowingly violates this section shall be  
33 punished by imprisonment in the state prison or in the county jail  
34 not exceeding one year, or by a fine not exceeding twenty thousand  
35 dollars (\$20,000), or by both a fine and imprisonment *or, on or*  
36 *after the operative date of an applicable rule or rules proposed*  
37 *by the California Public Safety Commission, shall be punished as*  
38 *provided in the applicable sentencing rules.*

1 (c) No provision of the amendments to this section enacted  
2 during the second year of the 1981–82 Regular Session shall be  
3 construed as expanding the scope of practice of a pharmacist.

4 *SEC. 10. Section 11162.5 of the Health and Safety Code is*  
5 *amended to read:*

6 11162.5. (a) Every person who counterfeits a prescription  
7 blank purporting to be an official prescription blank prepared and  
8 issued pursuant to Section 11161.5, or knowingly possesses more  
9 than three counterfeited prescription blanks, shall be punished by  
10 imprisonment in the state prison or by imprisonment in a county  
11 jail for not more than one year.

12 (b) Every person who knowingly possesses three or fewer  
13 counterfeited prescription blanks purporting to be official  
14 prescription blanks prepared and issued pursuant to Section  
15 11161.5, shall be guilty of a misdemeanor punishable by  
16 imprisonment in a county jail not exceeding six months, or by a  
17 fine not exceeding one thousand dollars (\$1,000), or by both.

18 (c) *Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 *SEC. 11. Section 11162.6 of the Health and Safety Code is*  
23 *amended to read:*

24 11162.6. (a) Every person who counterfeits a controlled  
25 substance prescription form shall be guilty of a misdemeanor  
26 punishable by imprisonment in a county jail for not more than one  
27 year, by a fine not exceeding one thousand dollars (\$1,000), or by  
28 both that imprisonment and fine.

29 (b) Every person who knowingly possesses a counterfeited  
30 controlled substance prescription form shall be guilty of a  
31 misdemeanor punishable by imprisonment in a county jail not  
32 exceeding six months, by a fine not exceeding one thousand dollars  
33 (\$1,000), or by both that imprisonment and fine.

34 (c) Every person who attempts to obtain or obtains a controlled  
35 substance prescription form under false pretenses shall be guilty  
36 of a misdemeanor punishable by imprisonment in a county jail not  
37 exceeding six months, by a fine not exceeding one thousand dollars  
38 (\$1,000), or by both that imprisonment and fine.

39 (d) Every person who fraudulently produces controlled substance  
40 prescription forms shall be guilty of a misdemeanor punishable

1 by imprisonment in a county jail not exceeding six months, by a  
2 fine not exceeding one thousand dollars (\$1,000), or by both that  
3 imprisonment and fine.

4 ~~(e) This section shall become operative on July 1, 2004.~~  
5 *Alternatively, on or after the operative date of an applicable rule*  
6 *or rules proposed by the California Public Safety Commission, a*  
7 *person who violates this section shall be punished as provided in*  
8 *the applicable sentencing rules.*

9 *SEC. 12. Section 11350 of the Health and Safety Code is*  
10 *amended to read:*

11 11350. (a) Except as otherwise provided in this division, every  
12 person who possesses (1) any controlled substance specified in  
13 subdivision (b) or (c), or paragraph (1) of subdivision (f) of Section  
14 11054, specified in paragraph (14), (15), or (20) of subdivision (d)  
15 of Section 11054, or specified in subdivision (b) or (c) of Section  
16 11055, or specified in subdivision (h) of Section 11056, or (2) any  
17 controlled substance classified in Schedule III, IV, or V which is  
18 a narcotic drug, unless upon the written prescription of a physician,  
19 dentist, podiatrist, or veterinarian licensed to practice in this state,  
20 shall be punished by imprisonment in the state prison.

21 (b) Except as otherwise provided in this division, every person  
22 who possesses any controlled substance specified in subdivision  
23 (e) of Section 11054 shall be punished by imprisonment in the  
24 county jail for not more than one year or in the state prison.

25 (c) Except as otherwise provided in this division, whenever a  
26 person who possesses any of the controlled substances specified  
27 in subdivision (a) or (b), the judge may, in addition to any  
28 punishment provided for pursuant to subdivision (a) or (b), assess  
29 against that person a fine not to exceed seventy dollars (\$70) with  
30 proceeds of this fine to be used in accordance with Section 1463.23  
31 of the Penal Code. The court shall, however, take into consideration  
32 the defendant's ability to pay, and no defendant shall be denied  
33 probation because of his or her inability to pay the fine permitted  
34 under this subdivision.

35 (d) Except in unusual cases in which it would not serve the  
36 interest of justice to do so, whenever a court grants probation  
37 pursuant to a felony conviction under this section, in addition to  
38 any other conditions of probation which may be imposed, the  
39 following conditions of probation shall be ordered:

1 (1) For a first offense under this section, a fine of at least one  
2 thousand dollars (\$1,000) or community service.

3 (2) For a second or subsequent offense under this section, a fine  
4 of at least two thousand dollars (\$2,000) or community service.

5 (3) If a defendant does not have the ability to pay the minimum  
6 fines specified in paragraphs (1) and (2), community service shall  
7 be ordered in lieu of the fine.

8 *(e) Alternatively, on or after the operative date of an applicable*  
9 *rule or rules proposed by the California Public Safety Commission,*  
10 *a person who violates this section shall be punished as provided*  
11 *in the applicable sentencing rules.*

12 *SEC. 13. Section 11351 of the Health and Safety Code is*  
13 *amended to read:*

14 11351. (a) Except as otherwise provided in this division, every  
15 person who possesses for sale or purchases for purposes of sale  
16 (1) any controlled substance specified in subdivision (b), (c), or  
17 (e) of Section 11054, specified in paragraph (14), (15), or (20) of  
18 subdivision (d) of Section 11054, or specified in subdivision (b)  
19 or (c) of Section 11055, or specified in subdivision (h) of Section  
20 11056, or (2) any controlled substance classified in Schedule III,  
21 IV, or V which is a narcotic drug, shall be punished by  
22 imprisonment in the state prison for two, three, or four years.

23 *(b) Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who violates this section shall be punished as provided*  
26 *in the applicable sentencing rules.*

27 *SEC. 14. Section 11351.5 of the Health and Safety Code is*  
28 *amended to read:*

29 11351.5. (a) Except as otherwise provided in this division,  
30 every person who possesses for sale or purchases for purposes of  
31 sale cocaine base which is specified in paragraph (1) of subdivision  
32 (f) of Section 11054, shall be punished by imprisonment in the  
33 state prison for a period of three, four, or five years.

34 *(b) Alternatively, on or after the operative date of an applicable*  
35 *rule or rules proposed by the California Public Safety Commission,*  
36 *a person who violates this section shall be punished as provided*  
37 *in the applicable sentencing rules.*

38 *SEC. 15. Section 11352 of the Health and Safety Code is*  
39 *amended to read:*

11352. (a) Except as otherwise provided in this division, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport (1) any controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, or specified in subdivision (b) or (c) of Section 11055, or specified in subdivision (h) of Section 11056, or (2) any controlled substance classified in Schedule III, IV, or V which is a narcotic drug, unless upon the written prescription of a physician, dentist, podiatrist, or veterinarian licensed to practice in this state, shall be punished by imprisonment in the state prison for three, four, or five years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 16. Section 11352.1 of the Health and Safety Code is amended to read:

11352.1. (a) The Legislature hereby declares that the dispensing and furnishing of prescription drugs, controlled substances, and dangerous drugs or dangerous devices without a license poses a significant threat to the health, safety, and welfare of all persons residing in the state. It is the intent of the Legislature in enacting this provision to enhance the penalties attached to this illicit and dangerous conduct.

(b) Notwithstanding Section 4321 of the Business and Professions Code, and in addition to any other penalties provided by law, any person who knowingly and unlawfully dispenses or furnishes a dangerous drug or dangerous device, or any material represented as, or presented in lieu of, any dangerous drug or dangerous device, as defined in Section 4022 of the Business and Professions Code, or who knowingly owns, manages, or operates a business that dispenses or furnishes a dangerous drug or



1 dangerous device or any material represented as, or presented in  
2 lieu of, any dangerous drug or dangerous device, as defined in  
3 Section 4022 of the Business and Professions Code without a  
4 license to dispense or furnish these products, shall be guilty of a  
5 misdemeanor. Upon the first conviction, each violation shall be  
6 punishable by imprisonment in a county jail not to exceed one  
7 year, or by a fine not to exceed five thousand dollars (\$5,000), or  
8 by both that fine and imprisonment. Upon a second or subsequent  
9 conviction, each violation shall be punishable by imprisonment in  
10 a county jail not to exceed one year, or by a fine not to exceed ten  
11 thousand dollars (\$10,000), or by both that fine and imprisonment.

12 *(c) Alternatively, on or after the operative date of an applicable*  
13 *rule or rules proposed by the California Public Safety Commission,*  
14 *a person who violates this section shall be punished as provided*  
15 *in the applicable sentencing rules.*

16 *SEC. 17. Section 11353 of the Health and Safety Code is*  
17 *amended to read:*

18 11353. (a) Every person 18 years of age or over, (a) who in  
19 any voluntary manner solicits, induces, encourages, or intimidates  
20 any minor with the intent that the minor shall violate any provision  
21 of this chapter or Section 11550 with respect to either (1) a  
22 controlled substance which is specified in subdivision (b), (c), or  
23 (e), or paragraph (1) of subdivision (f) of Section 11054, specified  
24 in paragraph (14), (15), or (20) of subdivision (d) of Section 11054,  
25 or specified in subdivision (b) or (c) of Section 11055, or specified  
26 in subdivision (h) of Section 11056, or (2) any controlled substance  
27 classified in Schedule III, IV, or V which is a narcotic drug, (b)  
28 who hires, employs, or uses a minor to unlawfully transport, carry,  
29 sell, give away, prepare for sale, or peddle any such controlled  
30 substance, or (c) who unlawfully sells, furnishes, administers,  
31 gives, or offers to sell, furnish, administer, or give, any such  
32 controlled substance to a minor, shall be punished by imprisonment  
33 in the state prison for a period of three, six, or nine years.

34 *(b) Alternatively, on or after the operative date of an applicable*  
35 *rule or rules proposed by the California Public Safety Commission,*  
36 *a person who violates this section shall be punished as provided*  
37 *in the applicable sentencing rules.*

38 *SEC. 18. Section 11353.1 of the Health and Safety Code is*  
39 *amended to read:*

1 11353.1. (a) Notwithstanding any other provision of law, any  
2 person 18 years of age or over who is convicted of a violation of  
3 Section 11353, in addition to the punishment imposed for that  
4 conviction, shall receive an additional punishment as follows:

5 (1) If the offense involved heroin, cocaine, cocaine base, or any  
6 analog of these substances and occurred upon the grounds of, or  
7 within, a church or synagogue, a playground, a public or private  
8 youth center, a child day care facility, or a public swimming pool,  
9 during hours in which the facility is open for business, classes, or  
10 school-related programs, or at any time when minors are using the  
11 facility, the defendant shall, as a full and separately served  
12 enhancement to any other enhancement provided in paragraph (3),  
13 be punished by imprisonment in the state prison for one year.

14 (2) If the offense involved heroin, cocaine, cocaine base, or any  
15 analog of these substances and occurred upon, or within 1,000 feet  
16 of, the grounds of any public or private elementary, vocational,  
17 junior high, or high school, during hours that the school is open  
18 for classes or school-related programs, or at any time when minors  
19 are using the facility where the offense occurs, the defendant shall,  
20 as a full and separately served enhancement to any other  
21 enhancement provided in paragraph (3), be punished by  
22 imprisonment in the state prison for two years.

23 (3) If the offense involved a minor who is at least four years  
24 younger than the defendant, the defendant shall, as a full and  
25 separately served enhancement to any other enhancement provided  
26 in this subdivision, be punished by imprisonment in the state prison  
27 for one, two, or three years, at the discretion of the court.

28 (4) *Alternatively, on or after the operative date of an applicable*  
29 *rule or rules proposed by the California Public Safety Commission,*  
30 *a person who violates this section shall be punished as provided*  
31 *in the applicable sentencing rules.*

32 (b) The additional punishment provided in this section shall not  
33 be imposed unless the allegation is charged in the accusatory  
34 pleading and admitted by the defendant or found to be true by the  
35 trier of fact.

36 (c) The additional punishment provided in this section shall be  
37 in addition to any other punishment provided by law and shall not  
38 be limited by any other provision of law.

39 (d) Notwithstanding any other provision of law, the court may  
40 strike the additional punishment provided for in this section if it

1 determines that there are circumstances in mitigation of the  
2 additional punishment and states on the record its reasons for  
3 striking the additional punishment.

4 (e) As used in this section the following definitions shall apply:

5 (1) "Playground" means any park or recreational area  
6 specifically designed to be used by children which has play  
7 equipment installed, including public grounds designed for athletic  
8 activities such as baseball, football, soccer, or basketball, or any  
9 similar facility located on public or private school grounds, or on  
10 city, county, or state parks.

11 (2) "Youth center" means any public or private facility that is  
12 primarily used to host recreational or social activities for minors,  
13 including, but not limited to, private youth membership  
14 organizations or clubs, social service teenage club facilities, video  
15 arcades, or similar amusement park facilities.

16 (3) "Video arcade" means any premises where 10 or more video  
17 game machines or devices are operated, and where minors are  
18 legally permitted to conduct business.

19 (4) "Video game machine" means any mechanical amusement  
20 device, which is characterized by the use of a cathode ray tube  
21 display and which, upon the insertion of a coin, slug, or token in  
22 any slot or receptacle attached to, or connected to, the machine,  
23 may be operated for use as a game, contest, or amusement.

24 (5) "Within 1,000 feet of the grounds of any public or private  
25 elementary, vocational, junior high, or high school" means any  
26 public area or business establishment where minors are legally  
27 permitted to conduct business which is located within 1,000 feet  
28 of any public or private elementary, vocational, junior high, or  
29 high school.

30 (6) "Child day care facility" has the meaning specified in Section  
31 1596.750.

32 (f) This section does not require either that notice be posted  
33 regarding the proscribed conduct or that the applicable 1,000-foot  
34 boundary limit be marked.

35 *SEC. 19. Section 11353.4 of the Health and Safety Code is*  
36 *amended to read:*

37 11353.4. (a) Any person 18 years of age or older who is  
38 convicted for a second or subsequent time of violating Section  
39 11353, as that section applies to paragraph (1) of subdivision (f)  
40 of Section 11054, where the previous conviction resulted in a

1 prison sentence, shall, as a full and separately served enhancement  
2 to the punishment imposed for that second or subsequent conviction  
3 of Section 11353, be punished by imprisonment in the state prison  
4 for one, two, or three years.

5 (b) If the second or subsequent violation of Section 11353, as  
6 described in subdivision (a), involved a minor who is 14 years of  
7 age or younger, the defendant shall, as a full and separately served  
8 enhancement to any other enhancement provided in this section,  
9 be punished by imprisonment in the state prison for one, two, or  
10 three years, at the discretion of the court.

11 (c) The additional punishment provided in this section shall not  
12 be imposed unless the allegation is charged in the accusatory  
13 pleading and admitted by the defendant or found to be true by the  
14 trier of fact.

15 (d) The additional punishment provided in this section shall be  
16 in addition to any other punishment provided by law and shall not  
17 be limited by any other provision of law.

18 (e) Notwithstanding any other provision of law, the court may  
19 strike the additional punishment provided for in this section if it  
20 determines that there are circumstances in mitigation of the  
21 additional punishment and states on the record its reasons for  
22 striking the additional punishment.

23 (f) *Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who violates this section shall be punished as provided*  
26 *in the applicable sentencing rules.*

27 *SEC. 20. Section 11353.5 of the Health and Safety Code is*  
28 *amended to read:*

29 11353.5. (a) Except as authorized by law, any person 18 years  
30 of age or older who unlawfully prepares for sale upon school  
31 grounds or a public playground, a child day care facility, a church,  
32 or a synagogue, or sells or gives away a controlled substance, other  
33 than a controlled substance described in Section 11353 or 11380,  
34 to a minor upon the grounds of, or within, any school, child day  
35 care facility, public playground, church, or synagogue providing  
36 instruction in preschool, kindergarten, or any of grades 1 to 12,  
37 inclusive, or providing child care services, during hours in which  
38 those facilities are open for classes, school-related programs, or  
39 child care, or at any time when minors are using the facility where  
40 the offense occurs, or upon the grounds of a public playground

1 during the hours in which school-related programs for minors are  
2 being conducted, or at any time when minors are using the facility  
3 where the offense occurs, shall be punished by imprisonment in  
4 the state prison for five, seven, or nine years. Application of this  
5 section shall be limited to persons at least five years older than the  
6 minor to whom he or she prepares for sale, sells, or gives away a  
7 controlled substance.

8 *(b) Alternatively, on or after the operative date of an applicable*  
9 *rule or rules proposed by the California Public Safety Commission,*  
10 *a person who violates this section shall be punished as provided*  
11 *in the applicable sentencing rules.*

12 *SEC. 21. Section 11353.6 of the Health and Safety Code is*  
13 *amended to read:*

14 11353.6. (a) This section shall be known, and may be cited,  
15 as the Juvenile Drug Trafficking and Schoolyard Act of 1988.

16 (b) Any person 18 years of age or over who is convicted of a  
17 violation of Section 11351.5, 11352, or 11379.6, as those sections  
18 apply to paragraph (1) of subdivision (f) of Section 11054, or of  
19 Section 11351, 11352, or 11379.6, as those sections apply to  
20 paragraph (11) of subdivision (c) of Section 11054, or of Section  
21 11378, 11379, or 11379.6, as those sections apply to paragraph  
22 (2) of subdivision (d) of Section 11055, or of a conspiracy to  
23 commit one of those offenses, where the violation takes place upon  
24 the grounds of, or within 1,000 feet of, a public or private  
25 elementary, vocational, junior high, or high school during hours  
26 that the school is open for classes or school-related programs, or  
27 at any time when minors are using the facility where the offense  
28 occurs, shall receive an additional punishment of 3, 4, or 5 years  
29 at the court's discretion.

30 (c) Any person 18 years of age or older who is convicted of a  
31 violation pursuant to subdivision (b) which involves a minor who  
32 is at least four years younger than that person, as a full and  
33 separately served enhancement to that provided in subdivision (b),  
34 shall be punished by imprisonment in the state prison for 3, 4, or  
35 5 years at the court's discretion.

36 (d) The additional terms provided in this section shall not be  
37 imposed unless the allegation is charged in the accusatory pleading  
38 and admitted or found to be true by the trier of fact.

(e) The additional terms provided in this section shall be in addition to any other punishment provided by law and shall not be limited by any other provision of law.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in this section if it determines that there are circumstances in mitigation of the additional punishment and states on the record its reasons for striking the additional punishment.

(g) “Within 1,000 feet of a public or private elementary, vocational, junior high, or high school” means any public area or business establishment where minors are legally permitted to conduct business which is located within 1,000 feet of any public or private elementary, vocational, junior high, or high school.

(h) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 22. *Section 11353.7 of the Health and Safety Code is amended to read:*

11353.7. (a) Except as authorized by law, and except as provided otherwise in Sections 11353.1, 11353.6, and 11380.1 with respect to playgrounds situated in a public park, any person 18 years of age or older who unlawfully prepares for sale in a public park, including units of the state park system and state vehicular recreation areas, or sells or gives away a controlled substance to a minor under the age of 14 years in a public park, including units of the state park system and state vehicular recreation areas, during hours in which the public park, including units of the state park system and state vehicular recreation areas, is open for use, with knowledge that the person is a minor under the age of 14 years, shall be punished by imprisonment in the state prison for three, six, or nine years.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 23. *Section 11354 of the Health and Safety Code is amended to read:*

11354. (a) Every person under the age of 18 years who in any voluntary manner solicits, induces, encourages, or intimidates any

1 minor with the intent that the minor shall violate any provision of  
2 this chapter or Section 11550, who hires, employs, or uses a minor  
3 to unlawfully transport, carry, sell, give away, prepare for sale, or  
4 peddle (1) any controlled substance specified in subdivision (b),  
5 (c), or (e), or paragraph (1) of subdivision (f) of Section 11054,  
6 specified in paragraph (14), (15), or (20) of subdivision (d) of  
7 Section 11054, or specified in subdivision (b) or (c) of Section  
8 11055, or specified in subdivision (h) of Section 11056, or (2) any  
9 controlled substance classified in Schedule III, IV, or V which is  
10 a narcotic drug, or who unlawfully sells, furnishes, administers,  
11 gives, or offers to sell, furnish, administer, or give, any such  
12 controlled substance to a minor shall be punished by imprisonment  
13 in the state prison.

14 *(b) Alternatively, on or after the operative date of an applicable*  
15 *rule or rules proposed by the California Public Safety Commission,*  
16 *a person who violates this section shall be punished as provided*  
17 *in the applicable sentencing rules.*

18 ~~(b)~~

19 *(c) This section is not intended to affect the jurisdiction of the*  
20 *juvenile court.*

21 *SEC. 24. Section 11355 of the Health and Safety Code is*  
22 *amended to read:*

23 11355. (a) Every person who agrees, consents, or in any  
24 manner offers to unlawfully sell, furnish, transport, administer, or  
25 give (1) any controlled substance specified in subdivision (b), (c),  
26 or (e), or paragraph (1) of subdivision (f) of Section 11054,  
27 specified in paragraph (13), (14), (15), or (20) of subdivision (d)  
28 of Section 11054, or specified in subdivision (b) or (c) of Section  
29 11055, or specified in subdivision (h) of Section 11056, or (2) any  
30 controlled substance classified in Schedule III, IV, or V which is  
31 a narcotic drug to any person, or who offers, arranges, or negotiates  
32 to have any such controlled substance unlawfully sold, delivered,  
33 transported, furnished, administered, or given to any person and  
34 who then sells, delivers, furnishes, transports, administers, or gives,  
35 or offers, arranges, or negotiates to have sold, delivered,  
36 transported, furnished, administered, or given to any person any  
37 other liquid, substance, or material in lieu of any such controlled  
38 substance shall be punished by imprisonment in the county jail for  
39 not more than one year, or in the state prison.

1     (b) *Alternatively, on or after the operative date of an applicable*  
2 *rule or rules proposed by the California Public Safety Commission,*  
3 *a person who violates this section shall be punished as provided*  
4 *in the applicable sentencing rules.*

5     SEC. 25. *Section 11356.5 of the Health and Safety Code is*  
6 *amended to read:*

7     11356.5. (a) Any person convicted of a violation of Section  
8 11351, 11352, 11379.5, or 11379.6 insofar as the latter section  
9 relates to phencyclidine or any of its analogs which is specified in  
10 paragraph (21), (22), or (23) of subdivision (d) of Section 11054  
11 or in paragraph (3) of subdivision (e) of Section 11055, who, as  
12 part of the transaction for which he or she was convicted, has  
13 induced another to violate Section 11351, 11352, 11379.5, or  
14 11379.6 insofar as the latter section relates to phencyclidine or its  
15 analogs, shall be punished as follows:

16     (1) By an additional one year in prison if the value of the  
17 controlled substance involved in the transaction for which the  
18 person was convicted exceeds five hundred thousand dollars  
19 (\$500,000).

20     (2) By an additional two years in prison if the value of the  
21 controlled substance involved in the transaction for which the  
22 person was convicted exceeds two million dollars (\$2,000,000).

23     (3) By an additional three years in prison if the value of the  
24 controlled substance involved in the transaction for which the  
25 person was convicted exceeds five million dollars (\$5,000,000).

26     (b) *Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates this section shall be punished as provided*  
29 *in the applicable sentencing rules.*

30     ~~(b)~~

31     (c) For purposes of this section, “value of the controlled  
32 substance” means the retail price to the user.

33     SEC. 26. *Section 11357 of the Health and Safety Code is*  
34 *amended to read:*

35     11357. (a) Except as authorized by law, every person who  
36 possesses any concentrated cannabis shall be punished by  
37 imprisonment in ~~the~~ a county jail for a period of not more than  
38 one year or by a fine of not more than five hundred dollars (\$500),  
39 or by both ~~such~~ that fine and imprisonment, or shall be punished  
40 by imprisonment in the state prison.



(b) Except as authorized by law, every person who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, is guilty of a misdemeanor and shall be punished by a fine of not more than one hundred dollars (\$100). Notwithstanding other provisions of law, if such person has been previously convicted three or more times of an offense described in this subdivision during the two-year period immediately preceding the date of commission of the violation to be charged, the previous convictions shall also be charged in the accusatory pleading and, if found to be true by the jury upon a jury trial or by the court upon a court trial or if admitted by the person, the provisions of Sections 1000.1 and 1000.2 of the Penal Code shall be applicable to him *or her*, and the court shall divert and refer him *or her* for education, treatment, or rehabilitation, without a court hearing or determination or the concurrence of the district attorney, to an appropriate community program which will accept him *or her*. If the person is so diverted and referred he *or she* shall not be subject to the fine specified in this subdivision. If no community program will accept him *or her*, the person shall be subject to the fine specified in this subdivision. In any case in which a person is arrested for a violation of this subdivision and does not demand to be taken before a magistrate, ~~such~~ *the* person shall be released by the arresting officer upon presentation of satisfactory evidence of identity and giving his *or her* written promise to appear in court, as provided in Section 853.6 of the Penal Code, and shall not be subjected to booking.

(c) Except as authorized by law, every person who possesses more than 28.5 grams of marijuana, other than concentrated cannabis, shall be punished by imprisonment in ~~the~~ *a* county jail for a period of not more than six months or by a fine of not more than five hundred dollars (\$500), or by both ~~such~~ *that* fine and imprisonment.

(d) Except as authorized by law, every person 18 years of age or over who possesses not more than 28.5 grams of marijuana, other than concentrated cannabis, upon the grounds of, or within, any school providing instruction in kindergarten or any of grades 1 through 12 during hours the school is open for classes or school-related programs is guilty of a misdemeanor and shall be punished by a fine of not more than five hundred dollars (\$500),

1 or by imprisonment in ~~the~~ a county jail for a period of not more  
2 than 10 days, or both.

3 (e) Except as authorized by law, every person under the age of  
4 18 who possesses not more than 28.5 grams of marijuana, other  
5 than concentrated cannabis, upon the grounds of, or within, any  
6 school providing instruction in kindergarten or any of grades 1  
7 through 12 during hours the school is open for classes or  
8 school-related programs is guilty of a misdemeanor and shall be  
9 subject to the following dispositions:

10 (1) A fine of not more than two hundred fifty dollars (\$250),  
11 upon a finding that a first offense has been committed.

12 (2) A fine of not more than five hundred dollars (\$500), or  
13 commitment to a juvenile hall, ranch, camp, forestry camp, or  
14 secure juvenile home for a period of not more than 10 days, or  
15 both, upon a finding that a second or subsequent offense has been  
16 committed.

17 (f) *Alternatively, on or after the operative date of an applicable*  
18 *rule or rules proposed by the California Public Safety Commission,*  
19 *a person who violates this section shall be punished as provided*  
20 *in the applicable sentencing rules.*

21 SEC. 27. *Section 11358 of the Health and Safety Code is*  
22 *amended to read:*

23 11358. Every person who plants, cultivates, harvests, dries, or  
24 processes any marijuana or any part thereof, except as otherwise  
25 provided by law, shall be punished by imprisonment in the state  
26 prison *or, on or after the operative date of an applicable rule or*  
27 *rules proposed by the California Public Safety Commission, shall*  
28 *be punished as provided in the applicable sentencing rules.*

29 SEC. 28. *Section 11359 of the Health and Safety Code is*  
30 *amended to read:*

31 11359. Every person who possesses for sale any marijuana,  
32 except as otherwise provided by law, shall be punished by  
33 imprisonment in the state prison *or, on or after the operative date*  
34 *of an applicable rule or rules proposed by the California Public*  
35 *Safety Commission, shall be punished as provided in the applicable*  
36 *sentencing rules.*

37 SEC. 29. *Section 11360 of the Health and Safety Code is*  
38 *amended to read:*

39 11360. (a) Except as otherwise provided by this section or as  
40 authorized by law, every person who transports, imports into this

1 state, sells, furnishes, administers, or gives away, or offers to  
2 transport, import into this state, sell, furnish, administer, or give  
3 away, or attempts to import into this state or transport any  
4 marijuana shall be punished by imprisonment in the state prison  
5 for a period of two, three or four years.

6 (b) Except as authorized by law, every person who gives away,  
7 offers to give away, transports, offers to transport, or attempts to  
8 transport not more than 28.5 grams of marijuana, other than  
9 concentrated cannabis, is guilty of a misdemeanor and shall be  
10 punished by a fine of not more than one hundred dollars (\$100).  
11 ~~In any case in which~~ If a person is arrested for a violation of this  
12 subdivision and does not demand to be taken before a magistrate,  
13 such person shall be released by the arresting officer upon  
14 presentation of satisfactory evidence of identity and giving his  
15 written promise to appear in court, as provided in Section 853.6  
16 of the Penal Code, and shall not be subjected to booking.

17 (c) *Alternatively, on or after the operative date of an applicable*  
18 *rule or rules proposed by the California Public Safety Commission,*  
19 *a person who violates this section shall be punished as provided*  
20 *in the applicable sentencing rules.*

21 *SEC. 30. Section 11361 of the Health and Safety Code is*  
22 *amended to read:*

23 11361. (a) Every person 18 years of age or over who hires,  
24 employs, or uses a minor in unlawfully transporting, carrying,  
25 selling, giving away, preparing for sale, or peddling any marijuana,  
26 who unlawfully sells, or offers to sell, any marijuana to a minor,  
27 or who furnishes, administers, or gives, or offers to furnish,  
28 administer, or give any marijuana to a minor under 14 years of  
29 age, or who induces a minor to use marijuana in violation of law  
30 shall be punished by imprisonment in the state prison for a period  
31 of three, five, or seven years.

32 (b) Every person 18 years of age or over who furnishes,  
33 administers, or gives, or offers to furnish, administer, or give, any  
34 marijuana to a minor 14 years of age or older shall be punished  
35 by imprisonment in the state prison for a period of three, four, or  
36 five years.

37 (c) *Alternatively, on or after the operative date of an applicable*  
38 *rule or rules proposed by the California Public Safety Commission,*  
39 *a person who violates this section shall be punished as provided*  
40 *in the applicable sentencing rules.*

1     *SEC. 31. Section 11363 of the Health and Safety Code is*  
2     *amended to read:*

3     11363. Every person who plants, cultivates, harvests, dries, or  
4     processes any plant of the genus *Lophophora*, also known as  
5     peyote, or any part thereof shall be punished by imprisonment in  
6     the county jail for a period of not more than one year or the state  
7     prison *or, on or after the operative date of an applicable rule or*  
8     *rules proposed by the California Public Safety Commission, shall*  
9     *be punished as provided in the applicable sentencing rules.*

10    *SEC. 32. Section 11364.7 of the Health and Safety Code is*  
11    *amended to read:*

12    11364.7. (a) Except as authorized by law, any person who  
13    delivers, furnishes, or transfers, possesses with intent to deliver,  
14    furnish, or transfer, or manufactures with the intent to deliver,  
15    furnish, or transfer, drug paraphernalia, knowing, or under  
16    circumstances where one reasonably should know, that it will be  
17    used to plant, propagate, cultivate, grow, harvest, compound,  
18    convert, produce, process, prepare, test, analyze, pack, repack,  
19    store, contain, conceal, inject, ingest, inhale, or otherwise introduce  
20    into the human body a controlled substance, except as provided  
21    in subdivision (b), in violation of this division, is guilty of a  
22    misdemeanor.

23    No public entity, its agents, or employees shall be subject to  
24    criminal prosecution for distribution of hypodermic needles or  
25    syringes to participants in clean needle and syringe exchange  
26    projects authorized by the public entity pursuant to Chapter 18  
27    (commencing with Section 121349) of Part 4 of Division 105.

28    (b) Except as authorized by law, any person who manufactures  
29    with intent to deliver, furnish, or transfer drug paraphernalia  
30    knowing, or under circumstances where one reasonably should  
31    know, that it will be used to plant, propagate, cultivate, grow,  
32    harvest, manufacture, compound, convert, produce, process,  
33    prepare, test, analyze, pack, repack, store, contain, conceal, inject,  
34    ingest, inhale, or otherwise introduce into the human body cocaine,  
35    cocaine base, heroin, phencyclidine, or methamphetamine in  
36    violation of this division shall be punished by imprisonment in a  
37    county jail for not more than one year, or in the state prison.

38    (c) Except as authorized by law, any person, 18 years of age or  
39    over, who violates subdivision (a) by delivering, furnishing, or  
40    transferring drug paraphernalia to a person under 18 years of age

1 who is at least three years his or her junior, or who, upon the  
2 grounds of a public or private elementary, vocational, junior high,  
3 or high school, possesses a hypodermic needle, as defined in  
4 paragraph (7) of subdivision (a) of Section 11014.5, with the intent  
5 to deliver, furnish, or transfer the hypodermic needle, knowing,  
6 or under circumstances where one reasonably should know, that  
7 it will be used by a person under 18 years of age to inject into the  
8 human body a controlled substance, is guilty of a misdemeanor  
9 and shall be punished by imprisonment in a county jail for not  
10 more than one year, by a fine of not more than one thousand dollars  
11 (\$1,000), or by both that imprisonment and fine.

12 (d) The violation, or the causing or the permitting of a violation,  
13 of subdivision (a), (b), or (c) by a holder of a business or liquor  
14 license issued by a city, county, or city and county, or by the State  
15 of California, and in the course of the licensee's business shall be  
16 grounds for the revocation of that license.

17 (e) All drug paraphernalia defined in Section 11014.5 is subject  
18 to forfeiture and may be seized by any peace officer pursuant to  
19 Section 11471.

20 (f) If any provision of this section or the application thereof to  
21 any person or circumstance is held invalid, it is the intent of the  
22 Legislature that the invalidity shall not affect other provisions or  
23 applications of this section which can be given effect without the  
24 invalid provision or application and to this end the provisions of  
25 this section are severable.

26 (g) *Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates this section shall be punished as provided*  
29 *in the applicable sentencing rules.*

30 SEC. 33. *Section 11366 of the Health and Safety Code is*  
31 *amended to read:*

32 11366. (a) Every person who opens or maintains any place  
33 for the purpose of unlawfully selling, giving away, or using any  
34 controlled substance which is (1) specified in subdivision (b), (c),  
35 or (e), or paragraph (1) of subdivision (f) of Section 11054,  
36 specified in paragraph (13), (14), (15), or (20) of subdivision (d)  
37 of Section 11054, or specified in subdivision (b); *or* (c), paragraph  
38 (1) or (2) of subdivision (d), or paragraph (3) of subdivision (e) of  
39 Section 11055, or (2) which is a narcotic drug classified in  
40 Schedule III, IV, or V, shall be punished by imprisonment in the

1 county jail for a period of not more than one year or the state  
2 prison.

3 *(b) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 *SEC. 34. Section 11366.5 of the Health and Safety Code is*  
8 *amended to read:*

9 11366.5. (a) Any person who has under his or her management  
10 or control any building, room, space, or enclosure, either as an  
11 owner, lessee, agent, employee, or mortgagee, who knowingly  
12 rents, leases, or makes available for use, with or without  
13 compensation, the building, room, space, or enclosure for the  
14 purpose of unlawfully manufacturing, storing, or distributing any  
15 controlled substance for sale or distribution shall be punished by  
16 imprisonment in the county jail for not more than one year, or in  
17 the state prison.

18 (b) Any person who has under his or her management or control  
19 any building, room, space, or enclosure, either as an owner, lessee,  
20 agent, employee, or mortgagee, who knowingly allows the building,  
21 room, space, or enclosure to be fortified to suppress law  
22 enforcement entry in order to further the sale of any amount of  
23 cocaine base as specified in paragraph (1) of subdivision (f) of  
24 Section 11054, cocaine as specified in paragraph (6) of subdivision  
25 (b) of Section 11055, heroin, phencyclidine, amphetamine,  
26 methamphetamine, or lysergic acid diethylamide and who obtains  
27 excessive profits from the use of the building, room, space, or  
28 enclosure shall be punished by imprisonment in the state prison  
29 for two, three, or four years.

30 (c) Any person who violates subdivision (a) after previously  
31 being convicted of a violation of subdivision (a) shall be punished  
32 by imprisonment in the state prison for two, three, or four years.

33 *(d) Alternatively, on or after the operative date of an applicable*  
34 *rule or rules proposed by the California Public Safety Commission,*  
35 *a person who violates this section shall be punished as provided*  
36 *in the applicable sentencing rules.*

37 ~~(d)~~

38 (e) For the purposes of this section, “excessive profits” means  
39 the receipt of consideration of a value substantially higher than  
40 fair market value.

1     *SEC. 35. Section 11366.6 of the Health and Safety Code is*  
2     *amended to read:*

3     11366.6. (a) Any person who utilizes a building, room, space,  
4     or enclosure specifically designed to suppress law enforcement  
5     entry in order to sell, manufacture, or possess for sale any amount  
6     of cocaine base as specified in paragraph (1) of subdivision (f) of  
7     Section 11054, cocaine as specified in paragraph (6) of subdivision  
8     (b) of Section 11055, heroin, phencyclidine, amphetamine,  
9     methamphetamine, or lysergic acid diethylamide shall be punished  
10    by imprisonment in the state prison for three, four, or five years.

11    (b) *Alternatively, on or after the operative date of an applicable*  
12    *rule or rules proposed by the California Public Safety Commission,*  
13    *a person who violates this section shall be punished as provided*  
14    *in the applicable sentencing rules.*

15    *SEC. 36. Section 11366.7 of the Health and Safety Code is*  
16    *amended to read:*

17    11366.7. (a) This section shall apply to the following:

18    (1) Any chemical or drug.

19    (2) Any laboratory apparatus or device.

20    (b) Any retailer or wholesaler who sells any item in paragraph  
21    (1) or (2) of subdivision (a) with knowledge or the intent that it  
22    will be used to unlawfully manufacture, compound, convert,  
23    process, or prepare a controlled substance for unlawful sale or  
24    distribution, shall be punished by imprisonment in a county jail  
25    for not more than one year, or in the state prison, or by a fine not  
26    exceeding twenty-five thousand dollars (\$25,000), or by both that  
27    imprisonment and fine. Any fine collected pursuant to this section  
28    shall be distributed as specified in Section 1463.10 of the Penal  
29    Code.

30    (c) *Alternatively, on or after the operative date of an applicable*  
31    *rule or rules proposed by the California Public Safety Commission,*  
32    *a person who violates this section shall be punished as provided*  
33    *in the applicable sentencing rules.*

34    *SEC. 37. Section 11366.8 of the Health and Safety Code is*  
35    *amended to read:*

36    11366.8. (a) Every person who possesses, uses, or controls a  
37    false compartment with the intent to store, conceal, smuggle, or  
38    transport a controlled substance within the false compartment shall  
39    be punished by imprisonment in a county jail for a term of  
40    imprisonment not to exceed one year or in the state prison.

(b) Every person who designs, constructs, builds, alters, or fabricates a false compartment for, or installs or attaches a false compartment to, a vehicle with the intent to store, conceal, smuggle, or transport a controlled substance shall be punished by imprisonment in the state prison for 16 months or two or three years.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

(d) The term “vehicle” means any of the following vehicles without regard to whether the vehicles are private or commercial, including, but not limited to, cars, trucks, buses, aircraft, boats, ships, yachts, and vessels.

(e) The term “false compartment” means any box, container, space, or enclosure that is intended for use or designed for use to conceal, hide, or otherwise prevent discovery of any controlled substance within or attached to a vehicle, including, but not limited to, any of the following:

- (1) False, altered, or modified fuel tanks.
- (2) Original factory equipment of a vehicle that is modified, altered, or changed.
- (3) Compartment, space, or box that is added to, or fabricated, made, or created from, existing compartments, spaces, or boxes within a vehicle.

*SEC. 38. Section 11368 of the Health and Safety Code is amended to read:*

11368. (a) Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission,*



1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 *SEC. 39. Section 11370 of the Health and Safety Code is*  
4 *amended to read:*

5 11370. (a) Any person convicted of violating Section 11350,  
6 11351, 11351.5, 11352, 11353, 11355, 11357, 11359, 11360,  
7 11361, 11363, 11366, or 11368, or of committing any offense  
8 referred to in those sections, shall not, in any case, be granted  
9 probation by the trial court or have the execution of the sentence  
10 imposed upon him or her suspended by the court, if he or she has  
11 been previously convicted of any offense described in subdivision  
12 (c).

13 (b) Any person who was 18 years of age or over at the time of  
14 the commission of the offense and is convicted for the first time  
15 of selling, furnishing, administering, or giving a controlled  
16 substance which is (1) specified in subdivision (b), (c), *or* (e), or  
17 paragraph (1) of subdivision (f) of Section 11054, specified in  
18 paragraph (14), (15), or (20) of subdivision (d) of Section 11054,  
19 or specified in subdivision (b) or (c) of Section 11055, or (2) which  
20 is a narcotic drug classified in Schedule III, IV, or V, to a minor  
21 or inducing a minor to use such a controlled substance in violation  
22 of law shall not, in any case, be granted probation by the trial court  
23 or have the execution of the sentence imposed upon him or her  
24 suspended by the court.

25 (c) Any previous conviction of any of the following offenses,  
26 or of an offense under the laws of another state or of the United  
27 States which, if committed in this state, would have been  
28 punishable as such an offense, shall render a person ineligible for  
29 probation or suspension of sentence pursuant to subdivision (a) of  
30 this section:

31 (1) Any felony offense described in this division involving a  
32 controlled substance specified in subdivision (b), (c), *or* (e), or  
33 paragraph (1) of subdivision (f) of Section 11054, specified in  
34 paragraph (13), (14), (15), or (20) of subdivision (d) of Section  
35 11054, or specified in subdivision (b) or (c) of Section 11055.

36 (2) Any felony offense described in this division involving a  
37 narcotic drug classified in Schedule III, IV, or V.

38 (d) The existence of any previous conviction or fact which would  
39 make a person ineligible for suspension of sentence or probation  
40 under this section shall be alleged in the information or indictment,

1 and either admitted by the defendant in open court, or found to be  
2 true by the jury trying the issue of guilt or by the court where guilt  
3 is established by a plea of guilty or nolo contendere or by trial by  
4 the court sitting without a jury.

5 *(e) Alternatively, on or after the operative date of an applicable*  
6 *rule or rules proposed by the California Public Safety Commission,*  
7 *a person who would be ineligible for probation pursuant to this*  
8 *section shall be punished as provided in the applicable sentencing*  
9 *rules.*

10 *SEC. 40. Section 11370.1 of the Health and Safety Code is*  
11 *amended to read:*

12 11370.1. (a) (1) Notwithstanding Section 11350 or 11377 or  
13 any other provision of law, every person who unlawfully possesses  
14 any amount of a substance containing cocaine base, a substance  
15 containing cocaine, a substance containing heroin, a substance  
16 containing methamphetamine, a crystalline substance containing  
17 phencyclidine, a liquid substance containing phencyclidine, plant  
18 material containing phencyclidine, or a hand-rolled cigarette treated  
19 with phencyclidine while armed with a loaded, operable firearm  
20 is guilty of a felony punishable by imprisonment in the state prison  
21 for two, three, or four years.

22 *(2) Alternatively, on or after the operative date of an applicable*  
23 *rule or rules proposed by the California Public Safety Commission,*  
24 *a person who violates this section shall be punished as provided*  
25 *in the applicable sentencing rules.*

26 ~~As~~

27 (3) As used in this subdivision, “armed with” means having  
28 available for immediate offensive or defensive use.

29 (b) Any person who is convicted under this section shall be  
30 ineligible for diversion or deferred entry of judgment under Chapter  
31 2.5 (commencing with Section 1000) of Title 6 of Part 2 of the  
32 Penal Code.

33 *SEC. 41. Section 11370.2 of the Health and Safety Code is*  
34 *amended to read:*

35 11370.2. (a) Any person convicted of a violation of, or of a  
36 conspiracy to violate, Section 11351, 11351.5, or 11352 shall  
37 receive, in addition to any other punishment authorized by law,  
38 including Section 667.5 of the Penal Code, a full, separate, and  
39 consecutive three-year term for each prior felony conviction of,  
40 or for each prior felony conviction of conspiracy to violate, Section

1 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5, 11379.6,  
2 11380, 11380.5, or 11383, whether or not the prior conviction  
3 resulted in a term of imprisonment.

4 (b) Any person convicted of a violation of, or of a conspiracy  
5 to violate, Section 11378.5, 11379.5, 11379.6, 11380.5, or 11383  
6 shall receive, in addition to any other punishment authorized by  
7 law, including Section 667.5 of the Penal Code, a full, separate,  
8 and consecutive three-year term for each prior felony conviction  
9 of, or for each prior felony conviction of conspiracy to violate,  
10 Section 11351, 11351.5, 11352, 11378, 11378.5, 11379, 11379.5,  
11 11379.6, 11380, 11380.5, or 11383, whether or not the prior  
12 conviction resulted in a term of imprisonment.

13 (c) Any person convicted of a violation of, or of a conspiracy  
14 to violate, Section 11378 or 11379 with respect to any substance  
15 containing a controlled substance specified in paragraph (1) or (2)  
16 of subdivision (d) of Section 11055 shall receive, in addition to  
17 any other punishment authorized by law, including Section 667.5  
18 of the Penal Code, a full, separate, and consecutive three-year term  
19 for each prior felony conviction of, or for each prior felony  
20 conviction of conspiracy to violate, Section 11351, 11351.5, 11352,  
21 11378, 11378.5, 11379, 11379.5, 11379.6, 11380, 11380.5, or  
22 11383, whether or not the prior conviction resulted in a term of  
23 imprisonment.

24 (d) The enhancements provided for in this section shall be  
25 pleaded and proven as provided by law.

26 (e) The conspiracy enhancements provided for in this section  
27 shall not be imposed unless the trier of fact finds that the defendant  
28 conspirator was substantially involved in the planning, direction,  
29 execution, or financing of the underlying offense.

30 (f) Prior convictions from another jurisdiction qualify for use  
31 under this section pursuant to Section 668 of the Penal Code.

32 (g) *Alternatively, on or after the operative date of an applicable*  
33 *rule or rules proposed by the California Public Safety Commission,*  
34 *a person who violates this section shall be punished as provided*  
35 *in the applicable sentencing rules.*

36 SEC. 42. *Section 11370.4 of the Health and Safety Code is*  
37 *amended to read:*

38 11370.4. (a) Any person convicted of a violation of, or of a  
39 conspiracy to violate, Section 11351, 11351.5, or 11352 with  
40 respect to a substance containing heroin, cocaine base as specified

1 in paragraph (1) of subdivision (f) of Section 11054, or cocaine  
2 as specified in paragraph (6) of subdivision (b) of Section 11055  
3 shall receive an additional term as follows:

4 (1) Where the substance exceeds one kilogram by weight, the  
5 person shall receive an additional term of three years.

6 (2) Where the substance exceeds four kilograms by weight, the  
7 person shall receive an additional term of five years.

8 (3) Where the substance exceeds 10 kilograms by weight, the  
9 person shall receive an additional term of 10 years.

10 (4) Where the substance exceeds 20 kilograms by weight, the  
11 person shall receive an additional term of 15 years.

12 (5) Where the substance exceeds 40 kilograms by weight, the  
13 person shall receive an additional term of 20 years.

14 (6) Where the substance exceeds 80 kilograms by weight, the  
15 person shall receive an additional term of 25 years.

16 The conspiracy enhancements provided for in this subdivision  
17 shall not be imposed unless the trier of fact finds that the defendant  
18 conspirator was substantially involved in the planning, direction,  
19 execution, or financing of the underlying offense.

20 (b) Any person convicted of a violation of, or of conspiracy to  
21 violate, Section 11378, 11378.5, 11379, or 11379.5 with respect  
22 to a substance containing methamphetamine, amphetamine,  
23 phencyclidine (PCP) and its analogs shall receive an additional  
24 term as follows:

25 (1) Where the substance exceeds one kilogram by weight, or  
26 30 liters by liquid volume, the person shall receive an additional  
27 term of three years.

28 (2) Where the substance exceeds four kilograms by weight, or  
29 100 liters by liquid volume, the person shall receive an additional  
30 term of five years.

31 (3) Where the substance exceeds 10 kilograms by weight, or  
32 200 liters by liquid volume, the person shall receive an additional  
33 term of 10 years.

34 (4) Where the substance exceeds 20 kilograms by weight, or  
35 400 liters by liquid volume, the person shall receive an additional  
36 term of 15 years.

37 In computing the quantities involved in this subdivision, plant  
38 or vegetable material seized shall not be included.

39 The conspiracy enhancements provided for in this subdivision  
40 shall not be imposed unless the trier of fact finds that the defendant

1 conspirator was substantially involved in the planning, direction,  
2 execution, or financing of the underlying offense.

3 (c) The additional terms provided in this section shall not be  
4 imposed unless the allegation that the weight of the substance  
5 containing heroin, cocaine base as specified in paragraph (1) of  
6 subdivision (f) of Section 11054, cocaine as specified in paragraph  
7 (6) of subdivision (b) of Section 11055, methamphetamine,  
8 amphetamine, or phencyclidine (PCP) and its analogs exceeds the  
9 amounts provided in this section is charged in the accusatory  
10 pleading and admitted or found to be true by the trier of fact.

11 (d) The additional terms provided in this section shall be in  
12 addition to any other punishment provided by law.

13 (e) Notwithstanding any other provision of law, the court may  
14 strike the additional punishment for the enhancements provided  
15 in this section if it determines that there are circumstances in  
16 mitigation of the additional punishment and states on the record  
17 its reasons for striking the additional punishment.

18 (f) *Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 SEC. 43. *Section 11370.6 of the Health and Safety Code is*  
23 *amended to read:*

24 11370.6. (a) Every person who possesses any moneys or  
25 negotiable instruments in excess of one hundred thousand dollars  
26 (\$100,000) which have been obtained as the result of the unlawful  
27 sale, possession for sale, transportation, manufacture, offer for  
28 sale, or offer to manufacture any controlled substance listed in  
29 Section 11054, 11055, 11056, 11057, or 11058, with knowledge  
30 that the moneys or negotiable instruments have been so obtained,  
31 and any person who possesses any moneys or negotiable  
32 instruments in excess of one hundred thousand dollars (\$100,000)  
33 which are intended by that person for the unlawful purchase of  
34 any controlled substance listed in Section 11054, 11055, 11056,  
35 11057, or 11058 and who commits an act in substantial furtherance  
36 of the unlawful purchase, shall be punished by imprisonment in  
37 the county jail for a term not to exceed one year, or by  
38 imprisonment in the state prison for two, three, or four years.

39 (b) *Alternatively, on or after the operative date of an applicable*  
40 *rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 ~~(b)~~

4 (c) In consideration of the constitutional right to counsel  
5 afforded by the Sixth Amendment to the United States Constitution  
6 and Section 15 of Article I of the California Constitution, when  
7 a case charged under subdivision (a) involves an attorney who  
8 accepts a fee for representing a client in a criminal investigation  
9 or proceeding, the prosecution shall additionally be required to  
10 prove that the moneys or negotiable instruments were accepted by  
11 the attorney with the intent to participate in the unlawful conduct  
12 described in subdivision (a) or to disguise or aid in disguising the  
13 source of the funds or the nature of the criminal activity.

14 ~~(e)~~

15 (d) In determining the guilt or innocence of a person charged  
16 under subdivision (a), the trier of fact may consider the following  
17 in addition to any other relevant evidence:

18 (1) The lack of gainful employment by the person charged.

19 (2) The expert opinion of a qualified controlled substances  
20 expert as to the source of the assets.

21 (3) The existence of documents or ledgers that indicate sales of  
22 controlled substances.

23 *SEC. 44. Section 11370.9 of the Health and Safety Code is*  
24 *amended to read:*

25 11370.9. (a) It is unlawful for any person knowingly to receive  
26 or acquire proceeds, or engage in a transaction involving proceeds,  
27 known to be derived from any violation of this division ~~or Division~~  
28 ~~10.1 or Chapter 5 (commencing with Section 109525) of Part 4 of~~  
29 *Division 104* with the intent to conceal or disguise or aid in  
30 concealing or disguising the nature, location, ownership, control,  
31 or source of the proceeds or to avoid a transaction reporting  
32 requirement under state or federal law.

33 (b) It is unlawful for any person knowingly to give, sell, transfer,  
34 trade, invest, conceal, transport, or maintain an interest in, or  
35 otherwise make available, anything of value which that person  
36 knows is intended to be used for the purpose of committing, or  
37 furthering the commission of, any violation of this division ~~or~~  
38 ~~Division 10.1 or Chapter 5 (commencing with Section 109525) of~~  
39 *Part 4 of Division 104* with the intent to conceal or disguise or aid  
40 in concealing or disguising the nature, location, ownership, control,

1 or source of the proceeds or to avoid a transaction reporting  
2 requirement under state or federal law.

3 (c) It is unlawful for any person knowingly to direct, plan,  
4 organize, initiate, finance, manage, supervise, or facilitate the  
5 transportation or transfer of proceeds known to be derived from  
6 any violation of this division—~~or Division 10.1 or Chapter 5~~  
7 *(commencing with Section 109525) of Part 4 of Division 104* with  
8 the intent to conceal or disguise or aid in concealing or disguising  
9 the nature, location, ownership, control, or source of the proceeds  
10 or to avoid a transaction reporting requirement under state or  
11 federal law.

12 (d) It is unlawful for any person knowingly to conduct a  
13 transaction involving proceeds derived from a violation of this  
14 division—~~or Division 10.1 or Chapter 5 (commencing with Section~~  
15 *109525) of Part 4 of Division 104* when the transaction is designed  
16 in whole or in part to conceal or disguise the nature, location,  
17 source, ownership, or control of the proceeds known to be derived  
18 from a violation of this division—~~or Division 10.1 or Chapter 5~~  
19 *(commencing with Section 109525) of Part 4 of Division 104* with  
20 the intent to conceal or disguise or aid in concealing or disguising  
21 the nature, location, ownership, control, or source of the proceeds  
22 or to avoid a transaction reporting requirement under state or  
23 federal law.

24 (e) A violation of this section shall be punished by imprisonment  
25 in a county jail for not more than one year or in the state prison  
26 for a period of two, three, or four years, by a fine of not more than  
27 two hundred fifty thousand dollars (\$250,000) or twice the value  
28 of the proceeds or property involved in the violation, whichever  
29 is greater, or by both that imprisonment and fine. Notwithstanding  
30 any other provision of law, each violation of this section shall  
31 constitute a separate, punishable offense without limitation.

32 (f) This section shall apply only to a transaction, or series of  
33 related transactions within a 30-day period, involving over  
34 twenty-five thousand dollars (\$25,000) or to proceeds of a value  
35 exceeding twenty-five thousand dollars (\$25,000).

36 (g) *Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates this section shall be punished as provided*  
39 *in the applicable sentencing rules.*

40 (g)

1 (h) In consideration of the constitutional right to counsel  
2 afforded by the Sixth Amendment to the United States Constitution  
3 and Section 15 of Article 4 I of the California Constitution, this  
4 section is not intended to apply to the receipt of, or a related  
5 transaction involving, a fee by an attorney for the purpose of  
6 providing advice or representing a person in a criminal  
7 investigation or prosecution.

8 (h)

9 (i) For the purposes of this section, the following terms have  
10 the following meanings:

11 (1) "Proceeds" means property acquired or derived directly or  
12 indirectly from, produced through, or realized through any violation  
13 of this division or ~~Division 10.1~~ Chapter 5 (commencing with  
14 Section 109525) of Part 4 of Division 104.

15 (2) "Transaction" includes a purchase, sale, trade, loan, pledge,  
16 investment, gift, transfer, transmission, delivery, deposit,  
17 withdrawal, payment, electronic, magnetic, or manual transfer  
18 between accounts, exchange of currency, extension of credit,  
19 purchase or sale of any monetary instrument, or any other  
20 acquisition or disposition of property by whatever means effected.

21 (3) "Represented by a law enforcement officer" means any  
22 representation of fact made by a peace officer as defined in Section  
23 7 of the Penal Code, or a federal officer described in subsection  
24 (e) of Sections 1956 and 1957 of Title 18 of the United States  
25 Code, or by another person at the direction of, or with the approval  
26 of, that peace officer or federal officer.

27 SEC. 45. Section 11371 of the Health and Safety Code is  
28 amended to read:

29 11371. (a) Any person who ~~shall knowingly violate~~ knowingly  
30 violates any of the provisions of Section 11153, 11154, 11155, or  
31 11156 with respect to (1) a controlled substance specified in  
32 subdivision (b), (c), or (d) of Section 11055, or (2) a controlled  
33 substance specified in paragraph (1) of subdivision (b) of Section  
34 11056, or (3) a controlled substance which is a narcotic drug  
35 classified in Schedule III, IV, or V, or who in any voluntary manner  
36 solicits, induces, encourages or intimidates any minor with the  
37 intent that such minor shall commit any such offense, shall be  
38 punished by imprisonment in the state prison or in a county jail  
39 not exceeding one year, or by a fine not exceeding twenty thousand  
40 dollars (\$20,000), or by both ~~such~~ the fine and imprisonment.



1     ***(b) Alternatively, on or after the operative date of an applicable***  
2     ***rule or rules proposed by the California Public Safety Commission,***  
3     ***a person who violates this section shall be punished as provided***  
4     ***in the applicable sentencing rules.***

5     SEC. 46. Section 11371.1 of the Health and Safety Code is  
6     amended to read:

7     11371.1. (a) Any person who ~~shall knowingly violate~~  
8     ***knowingly violates*** any of the provisions of Section 11173 or 11174  
9     with respect to (1) a controlled substance specified in subdivision  
10    (b), (c), or (d) of Section 11055, or (2) a controlled substance  
11    specified in paragraph (1) of subdivision (b) of Section 11056, or  
12    (3) a controlled substance which is a narcotic drug classified in  
13    Schedule III, IV, or V, or who in any voluntary manner solicits,  
14    induces, encourages or intimidates any minor with the intent that  
15    such minor shall commit any such offense, shall be punished by  
16    imprisonment in the state prison, or in a county jail not exceeding  
17    one year.

18    ***(b) Alternatively, on or after the operative date of an applicable***  
19    ***rule or rules proposed by the California Public Safety Commission,***  
20    ***a person who would be subject to a penalty pursuant to this section***  
21    ***shall be punished as provided in the applicable sentencing rules.***

22    SEC. 47. Section 11372 of the Health and Safety Code is  
23    amended to read:

24    11372. (a) In addition to the term of imprisonment provided  
25    by law for persons convicted of violating Section 11350, 11351,  
26    11351.5, 11352, 11353, 11355, 11359, 11360, or 11361, the trial  
27    court may impose a fine not exceeding twenty thousand dollars  
28    (\$20,000) for each offense. In no event shall a fine be levied in  
29    lieu of or in substitution for the term of imprisonment provided  
30    by law for any of these offenses.

31    (b) Any person receiving an additional term pursuant to  
32    paragraph (1) of subdivision (a) of Section 11370.4, may, in  
33    addition, be fined by an amount not exceeding one million dollars  
34    (\$1,000,000) for each offense.

35    (c) Any person receiving an additional term pursuant to  
36    paragraph (2) of subdivision (a) of Section 11370.4, may, in  
37    addition, be fined by an amount not to exceed four million dollars  
38    (\$4,000,000) for each offense.

39    (d) Any person receiving an additional term pursuant to  
40    paragraph (3) of subdivision (a) of Section 11370.4, may, in

1 addition, be fined by an amount not to exceed eight million dollars  
2 (\$8,000,000) for each offense.

3 (e) The court shall make a finding, prior to the imposition of  
4 the fines authorized by subdivisions (b) to (e), inclusive, that there  
5 is a reasonable expectation that the fine, or a substantial portion  
6 thereof, could be collected within a reasonable period of time,  
7 taking into consideration the defendant's income, earning capacity,  
8 and financial resources.

9 (f) *Alternatively, on or after the operative date of an applicable*  
10 *rule or rules proposed by the California Public Safety Commission,*  
11 *a person who would be subject to a penalty pursuant to this section*  
12 *shall be punished as provided in the applicable sentencing rules.*

13 SEC. 48. *Section 11374 of the Health and Safety Code is*  
14 *amended to read:*

15 11374. (a) Every person who violates or fails to comply with  
16 any provision of this division, except one for which a penalty is  
17 otherwise in this division specifically provided, is guilty of a  
18 misdemeanor punishable by a fine in a sum not less than thirty  
19 dollars (\$30) nor more than five hundred dollars (\$500), or by  
20 imprisonment *in a county jail* for not less than 15 nor more than  
21 180 days, or by both.

22 (b) *Alternatively, on or after the operative date of an applicable*  
23 *rule or rules proposed by the California Public Safety Commission,*  
24 *a person who violates this section shall be punished as provided*  
25 *in the applicable sentencing rules.*

26 SEC. 49. *Section 11374.5 of the Health and Safety Code is*  
27 *amended to read:*

28 11374.5. (a) Any manufacturer of a controlled substance who  
29 disposes of any hazardous substance that is a controlled substance  
30 or a chemical used in, or is a byproduct of, the manufacture of a  
31 controlled substance in violation of any law regulating the disposal  
32 of hazardous substances or hazardous waste is guilty of a public  
33 offense punishable by imprisonment in the state prison for two,  
34 three, or four years or in the county jail not exceeding one year.

35 (b) (1) In addition to any other penalty or liability imposed by  
36 law, a person who is convicted of violating subdivision (a), or any  
37 person who is convicted of the manufacture, sale, possession for  
38 sale, possession, transportation, or disposal of any hazardous  
39 substance that is a controlled substance or a chemical used in, or  
40 is a byproduct of, the manufacture of a controlled substance in

1 violation of any law, shall pay a penalty equal to the amount of  
2 the actual cost incurred by the state or local agency to remove and  
3 dispose of the hazardous substance that is a controlled substance  
4 or a chemical used in, or is a byproduct of, the manufacture of a  
5 controlled substance and to take removal action with respect to  
6 any release of the hazardous substance or any items or materials  
7 contaminated by that release, if the state or local agency requests  
8 the prosecuting authority to seek recovery of that cost. The court  
9 shall transmit all penalties collected pursuant to this subdivision  
10 to the county treasurer of the county in which the court is located  
11 for deposit in a special account in the county treasury. The county  
12 treasurer shall pay that money at least once a month to the agency  
13 that requested recovery of the cost for the removal action. The  
14 county may retain up to 5 percent of any assessed penalty for  
15 appropriate and reasonable administrative costs attributable to the  
16 collection and disbursement of the penalty.

17 (2) If the Department of Toxic Substances Control has requested  
18 recovery of the cost of removing the hazardous substance that is  
19 a controlled substance or a chemical used in, or is a byproduct of,  
20 the manufacture of a controlled substance or taking removal action  
21 with respect to any release of the hazardous substance, the county  
22 treasurer shall transfer funds in the amount of the penalty collected  
23 to the Treasurer, who shall deposit the money in the Illegal Drug  
24 Lab Cleanup Account, which is hereby created in the General Fund  
25 in the State Treasury. The Department of Toxic Substances Control  
26 may expend the money in the Illegal Drug Lab Cleanup Account,  
27 upon appropriation by the Legislature, to cover the cost of taking  
28 removal actions pursuant to Section 25354.5.

29 (3) If a local agency and the Department of Toxic Substances  
30 Control have both requested recovery of removal costs with respect  
31 to a hazardous substance that is a controlled substance or a  
32 chemical used in, or is a byproduct of, the manufacture of a  
33 controlled substance, the county treasurer shall apportion any  
34 penalty collected among the agencies involved in proportion to  
35 the costs incurred.

36 *(c) Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates this section shall be punished as provided*  
39 *in the applicable sentencing rules.*

40 (e)

(d) As used in this section the following terms have the following meaning:

(1) “Dispose” means to abandon, deposit, intern, or otherwise discard as a final action after use has been achieved or a use is no longer intended.

(2) “Hazardous substance” has the same meaning as defined in Section 25316.

(3) “Hazardous waste” has the same meaning as defined in Section 25117.

(4) For purposes of this section, “remove” or “removal” has the same meaning as set forth in Section 25323.

*SEC. 50. Section 11375 of the Health and Safety Code, as amended by Section 1 of Chapter 838 of the Statutes of 2001, is amended to read:*

11375. (a) As to the substances specified in subdivision-~~(e)~~ (d), this section, and not Sections 11377, 11378, 11379, and 11380, shall apply.

(b) (1) Every person who possesses for sale, or who sells, any substance specified in subdivision-~~(e)~~ (d) shall be punished by imprisonment in the a county jail for a period of not more than one year or state prison.

(2) Every person who possesses any controlled substance specified in subdivision-~~(e)~~ (d), unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be guilty of an infraction or a misdemeanor.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~

(d) This section shall apply to any material, compound, mixture, or preparation containing any of the following substances:

(1) Chlordiazepoxide.

(2) Clonazepam.

(3) Clorazepate.

(4) Diazepam.

(5) Flurazepam.

(6) Lorazepam.

(7) Mebutamate.

(8) Oxazepam.

- 1 (9) Prazepam.
- 2 (10) Temazepam.
- 3 (11) Halazepam.
- 4 (12) Alprazolam.
- 5 (13) Propoxyphene.
- 6 (14) Diethylpropion.
- 7 (15) Phentermine.
- 8 (16) Pemoline.
- 9 (17) Triazolam.

10 *SEC. 51. Section 11375 of the Health and Safety Code, as*  
11 *amended by Section 2 of Chapter 838 of the Statutes of 2001, is*  
12 *amended to read:*

13 11375. (a) As to the substances specified in subdivision~~(e)~~  
14 ~~(d)~~, this section, and not Sections 11377, 11378, 11379, and 11380,  
15 shall apply.

16 (b) (1) Every person who possesses for sale, or who sells, any  
17 substance specified in subdivision~~(e)~~ ~~(d)~~ shall be punished by  
18 imprisonment in~~the~~ a county jail for a period of not more than  
19 one year or state prison.

20 (2) Every person who possesses any controlled substance  
21 specified in subdivision~~(e)~~ ~~(d)~~, unless upon the prescription of a  
22 physician, dentist, podiatrist, or veterinarian, licensed to practice  
23 in this state, shall be guilty of an infraction or a misdemeanor.

24 (c) *Alternatively, on or after the operative date of an applicable*  
25 *rule or rules proposed by the California Public Safety Commission,*  
26 *a person who violates this section shall be punished as provided*  
27 *in the applicable sentencing rules.*

28 ~~(e)~~

29 (d) This section shall apply to any material, compound, mixture,  
30 or preparation containing any of the following substances:

- 31 (1) Chlordiazepoxide.
- 32 (2) Clonazepam.
- 33 (3) Clorazepate.
- 34 (4) Diazepam.
- 35 (5) Flurazepam.
- 36 (6) Lorazepam.
- 37 (7) Mebutamate.
- 38 (8) Oxazepam.
- 39 (9) Prazepam.
- 40 (10) Temazepam.

- 1 (11) Halazepam.
- 2 (12) Alprazolam.
- 3 (13) Propoxyphene.
- 4 (14) Diethylpropion.
- 5 (15) Phentermine.
- 6 (16) Pemoline.
- 7 (17) Fenfluramine.
- 8 (18) Triazolam.

9 *SEC. 52. Section 11377 of the Health and Safety Code is*  
10 *amended to read:*

11 11377. (a) Except as authorized by law and as otherwise  
12 provided in subdivision (b) or Section 11375, or in Article 7  
13 (commencing with Section 4211) of Chapter 9 of Division 2 of  
14 the Business and Professions Code, every person who possesses  
15 any controlled substance which is (1) classified in Schedule III,  
16 IV, or V, and which is not a narcotic drug, (2) specified in  
17 subdivision (d) of Section 11054, except paragraphs (13), (14),  
18 (15), and (20) of subdivision (d), (3) specified in paragraph (11)  
19 of subdivision (c) of Section 11056, (4) specified in paragraph (2)  
20 or (3) of subdivision (f) of Section 11054, or (5) specified in  
21 subdivision (d), (e), or (f) of Section 11055, unless upon the  
22 prescription of a physician, dentist, podiatrist, or veterinarian,  
23 licensed to practice in this state, shall be punished by imprisonment  
24 in a county jail for a period of not more than one year or in the  
25 state prison.

26 (b) (1) Any person who violates subdivision (a) by unlawfully  
27 possessing a controlled substance specified in subdivision (f) of  
28 Section 11056, and who has not previously been convicted of a  
29 violation involving a controlled substance specified in subdivision  
30 (f) of Section 11056, is guilty of a misdemeanor.

31 (2) Any person who violates subdivision (a) by unlawfully  
32 possessing a controlled substance specified in subdivision (g) of  
33 Section 11056 is guilty of a misdemeanor.

34 (3) Any person who violates subdivision (a) by unlawfully  
35 possessing a controlled substance specified in paragraph (7) or (8)  
36 of subdivision (d) of Section 11055 is guilty of a misdemeanor.

37 (4) Any person who violates subdivision (a) by unlawfully  
38 possessing a controlled substance specified in paragraph (8) of  
39 subdivision (f) of Section 11057 is guilty of a misdemeanor.

(c) In addition to any fine assessed under subdivision (b), the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates subdivision (a), with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

*(d) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 53. Section 11378 of the Health and Safety Code is amended to read:

11378. (a) Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d), (e), or (f), except paragraph (3) of subdivision (e) and subparagraphs (A) and (B) of paragraph (2) of subdivision (f), of Section 11055, shall be punished by imprisonment in the state prison.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 54. Section 11378.5 of the Health and Safety Code is amended to read:

11378.5. (a) Except as otherwise provided in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who possesses for sale phencyclidine or any analog or any precursor of phencyclidine which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054 or in paragraph (3) of

subdivision (e) or in subdivision (f), except subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, shall be punished by imprisonment in the state prison for a period of three, four, or five years.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

*SEC. 55. Section 11379 of the Health and Safety Code is amended to read:*

11379. (a) Except as otherwise provided in subdivision (b) and in Article 7 (commencing with Section 4211) of Chapter 9 of Division 2 of the Business and Professions Code, every person who transports, imports into this state, sells, furnishes, administers, or gives away, or offers to transport, import into this state, sell, furnish, administer, or give away, or attempts to import into this state or transport any controlled substance which is (1) classified in Schedule III, IV, or V and which is not a narcotic drug, except subdivision (g) of Section 11056, (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), (20), (21), (22), and (23) of subdivision (d), (3) specified in paragraph (11) of subdivision (c) of Section 11056, (4) specified in paragraph (2) or (3) of subdivision (f) of Section 11054, or (5) specified in subdivision (d) or (e), except paragraph (3) of subdivision (e), or specified in subparagraph (A) of paragraph (1) of subdivision (f), of Section 11055, unless upon the prescription of a physician, dentist, podiatrist, or veterinarian, licensed to practice in this state, shall be punished by imprisonment in the state prison for a period of two, three, or four years.

(b) Notwithstanding the penalty provisions of subdivision (a), any person who transports for sale any controlled substances specified in subdivision (a) within this state from one county to another noncontiguous county shall be punished by imprisonment in the state prison for three, six, or nine years.

*(c) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

*SEC. 56. Section 11379.2 of the Health and Safety Code is amended to read:*



1 11379.2. (a) Except as otherwise provided in Article 7  
2 (commencing with Section 4211) of Chapter 9 of Division 2 of  
3 the Business and Professions Code, every person who possesses  
4 for sale or sells any controlled substance specified in subdivision  
5 (g) of Section 11056 shall be punished by imprisonment in ~~the a~~  
6 county jail for a period of not more than one year or in the state  
7 prison.

8 (b) *Alternatively, on or after the operative date of an applicable*  
9 *rule or rules proposed by the California Public Safety Commission,*  
10 *a person who violates this section shall be punished as provided*  
11 *in the applicable sentencing rules.*

12 SEC. 57. Section 11379.5 of the Health and Safety Code is  
13 amended to read:

14 11379.5. (a) Except as otherwise provided in subdivision (b)  
15 and in Article 7 (commencing with Section 4211) of Chapter 9 of  
16 Division 2 of the Business and Professions Code, every person  
17 who transports, imports into this state, sells, furnishes, administers,  
18 or gives away, or offers to transport, import into this state, sell,  
19 furnish, administer, or give away, or attempts to import into this  
20 state or transport phencyclidine or any of its analogs which is  
21 specified in paragraph (21), (22), or (23) of subdivision (d) of  
22 Section 11054 or in paragraph (3) of subdivision (e) of Section  
23 11055, or its precursors as specified in subparagraph (A) or (B)  
24 of paragraph (2) of subdivision (f) of Section 11055, unless upon  
25 the prescription of a physician, dentist, podiatrist, or veterinarian  
26 licensed to practice in this state, shall be punished by imprisonment  
27 in the state prison for a period of three, four, or five years.

28 (b) Notwithstanding the penalty provisions of subdivision (a),  
29 any person who transports for sale any controlled substances  
30 specified in subdivision (a) within this state from one county to  
31 another noncontiguous county shall be punished by imprisonment  
32 in the state prison for three, six, or nine years.

33 (c) *Alternatively, on or after the operative date of an applicable*  
34 *rule or rules proposed by the California Public Safety Commission,*  
35 *a person who violates this section shall be punished as provided*  
36 *in the applicable sentencing rules.*

37 SEC. 58. Section 11379.6 of the Health and Safety Code is  
38 amended to read:

39 11379.6. (a) Except as otherwise provided by law, every person  
40 who manufactures, compounds, converts, produces, derives,

1 processes, or prepares, either directly or indirectly by chemical  
2 extraction or independently by means of chemical synthesis, any  
3 controlled substance specified in Section 11054, 11055, 11056,  
4 11057, or 11058 shall be punished by imprisonment in the state  
5 prison for three, five, or seven years and by a fine not exceeding  
6 fifty thousand dollars (\$50,000).

7 (b) Except when an enhancement pursuant to Section 11379.7  
8 is pled and proved, the fact that a person under 16 years of age  
9 resided in a structure in which a violation of this section involving  
10 methamphetamine occurred shall be considered a factor in  
11 aggravation by the sentencing court.

12 (c) Except as otherwise provided by law, every person who  
13 offers to perform an act which is punishable under subdivision (a)  
14 shall be punished by imprisonment in the state prison for three,  
15 four, or five years.

16 (d) *Alternatively, on or after the operative date of an applicable*  
17 *rule or rules proposed by the California Public Safety Commission,*  
18 *a person who violates this section shall be punished as provided*  
19 *in the applicable sentencing rules.*

20 ~~(d)~~

21 (e) All fines collected pursuant to subdivision (a) shall be  
22 transferred to the State Treasury for deposit in the Clandestine  
23 Drug Lab Clean-up Account, as established by Section 5 of Chapter  
24 1295 of the Statutes of 1987. The transmission to the State Treasury  
25 shall be carried out in the same manner as fines collected for the  
26 state by the county.

27 *SEC. 59. Section 11379.7 of the Health and Safety Code is*  
28 *amended to read:*

29 11379.7. (a) Except as provided in subdivision (b), any person  
30 convicted of a violation of subdivision (a) of Section 11379.6 or  
31 Section 11383, or of an attempt to violate subdivision (a) of Section  
32 11379.6 or Section 11383, as those sections relate to  
33 methamphetamine or phencyclidine, when the commission or  
34 attempted commission of the crime occurs in a structure where  
35 any child under 16 years of age is present, shall, in addition and  
36 consecutive to the punishment prescribed for the felony of which  
37 he or she has been convicted, be punished by an additional term  
38 of two years in the state prison.

39 (b) Any person convicted of a violation of subdivision (a) of  
40 Section 11379.6 or Section 11383, or of an attempt to violate

subdivision (a) of Section 11379.6 or Section 11383, as those sections relate to methamphetamine or phencyclidine, where the commission of the crime causes any child under 16 years of age to suffer great bodily injury, shall, in addition and consecutive to the punishment prescribed for the felony of which he or she has been convicted, be punished by an additional term of five years in the state prison.

*(c) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~  
(d) As used in this section, “structure” means any house, apartment building, shop, warehouse, barn, building, vessel, railroad car, cargo container, motor vehicle, housecar, trailer, trailer coach, camper, mine, floating home, or other enclosed structure capable of holding a child and manufacturing equipment.

~~(d)~~  
(e) As used in this section, “great bodily injury” has the same meaning as defined in Section 12022.7 of the Penal Code.

*SEC. 60. Section 11379.8 of the Health and Safety Code is amended to read:*

11379.8. (a) Any person convicted of a violation of subdivision (a) of Section 11379.6, or of a conspiracy to violate subdivision (a) of Section 11379.6, with respect to any substance containing a controlled substance which is specified in paragraph (21), (22), or (23) of subdivision (d) of Section 11054, or in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) or in paragraph (2) of subdivision (f) of Section 11055 shall receive an additional term as follows:

(1) Where the substance exceeds three gallons of liquid by volume or one pound of solid substances by weight, the person shall receive an additional term of three years.

(2) Where the substance exceeds 10 gallons of liquid by volume or three pounds of solid substance by weight, the person shall receive an additional term of five years.

(3) Where the substance exceeds 25 gallons of liquid by volume or 10 pounds of solid substance by weight, the person shall receive an additional term of 10 years.

1 (4) Where the substance exceeds 105 gallons of liquid by volume  
2 or 44 pounds of solid substance by weight, the person shall receive  
3 an additional term of 15 years.

4 In computing the quantities involved in this subdivision, plant  
5 or vegetable material seized shall not be included.

6 (b) The additional terms provided in this section shall not be  
7 imposed unless the allegation that the controlled substance exceeds  
8 the amounts provided in this section is charged in the accusatory  
9 pleading and admitted or found to be true by the trier of fact.

10 (c) The additional terms provided in this section shall be in  
11 addition to any other punishment provided by law.

12 (d) Notwithstanding any other provision of law, the court may  
13 strike the additional punishment for the enhancements provided  
14 in this section if it determines that there are circumstances in  
15 mitigation of the additional punishment and states on the record  
16 its reasons for striking the additional punishment.

17 (e) The conspiracy enhancements provided for in this section  
18 shall not be imposed unless the trier of fact finds that the defendant  
19 conspirator was substantially involved in the direction or  
20 supervision of, or in a significant portion of the financing of, the  
21 underlying offense.

22 (f) *Alternatively, on or after the operative date of an applicable*  
23 *rule or rules proposed by the California Public Safety Commission,*  
24 *a person who violates this section shall be punished as provided*  
25 *in the applicable sentencing rules.*

26 *SEC. 61. Section 11379.9 of the Health and Safety Code is*  
27 *amended to read:*

28 11379.9. (a) Except as provided by Section 11379.7, any  
29 person convicted of a violation of, or of an attempt to violate,  
30 subdivision (a) of Section 11379.6 or Section 11383, as those  
31 sections relate to methamphetamine or phencyclidine, when the  
32 commission or attempted commission of the offense causes the  
33 death or great bodily injury of another person other than an  
34 accomplice, shall, in addition and consecutive to any other  
35 punishment authorized by law, be punished by an additional term  
36 of one year in the state prison for each death or injury.

37 (b) Nothing in this section shall preclude prosecution under both  
38 this section and Section 187, 192, or 12022.7, or any other  
39 provision of law. However, a person who is punished under another  
40 provision of law for causing death or great bodily injury as

described in subdivision (a) shall not receive an additional term of imprisonment under this section.

*(c) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 62. Section 11380 of the Health and Safety Code is amended to read:

11380. (a) Every person 18 years of age or over who violates any provision of this chapter involving controlled substances which are (1) classified in Schedule III, IV, or V and which are not narcotic drugs or (2) specified in subdivision (d) of Section 11054, except paragraphs (13), (14), (15), and (20) of subdivision (d), specified in paragraph (11) of subdivision (c) of Section 11056, specified in paragraph (2) or (3) ~~or~~ of subdivision (f) of Section 11054, or specified in subdivision (d), (e), or (f) of Section 11055, by the use of a minor as agent, who solicits, induces, encourages, or intimidates any minor with the intent that the minor shall violate any provision of this article involving those controlled substances or who unlawfully furnishes, offers to furnish, or attempts to furnish those controlled substances to a minor shall be punished by imprisonment in the state prison for a period of three, six, or nine years.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(b)~~

(c) Nothing in this section applies to a registered pharmacist furnishing controlled substances pursuant to a prescription.

SEC. 63. Section 11380.1 of the Health and Safety Code is amended to read:

11380.1. (a) Notwithstanding any other provision of law, any person 18 years of age or over who is convicted of a violation of Section 11380, in addition to the punishment imposed for that conviction, shall receive an additional punishment as follows:

(1) If the offense involved phencyclidine (PCP), methamphetamine, lysergic acid diethylamide (LSD), or any analog of these substances and occurred upon the grounds of, or within, a church or synagogue, a playground, a public or private youth

1 center, a child day care facility, or a public swimming pool, during  
2 hours in which the facility is open for business, classes, or  
3 school-related programs, or at any time when minors are using the  
4 facility, the defendant shall, as a full and separately served  
5 enhancement to any other enhancement provided in paragraph (3),  
6 be punished by imprisonment in the state prison for one year.

7 (2) If the offense involved phencyclidine (PCP),  
8 methamphetamine, lysergic acid diethylamide (LSD), or any analog  
9 of these substances and occurred upon, or within 1,000 feet of, the  
10 grounds of any public or private elementary, vocational, junior  
11 high school, or high school, during hours that the school is open  
12 for classes or school-related programs, or at any time when minors  
13 are using the facility where the offense occurs, the defendant shall,  
14 as a full and separately served enhancement to any other  
15 enhancement provided in paragraph (3), be punished by  
16 imprisonment in the state prison for two years.

17 (3) If the offense involved a minor who is at least four years  
18 younger than the defendant, the defendant shall, as a full and  
19 separately served enhancement to any other enhancement provided  
20 in this subdivision, be punished by imprisonment in the state prison  
21 for one, two, or three years, at the discretion of the court.

22 (b) The additional punishment provided in this section shall not  
23 be imposed unless the allegation is charged in the accusatory  
24 pleading and admitted by the defendant or found to be true by the  
25 trier of fact.

26 (c) The additional punishment provided in this section shall be  
27 in addition to any other punishment provided by law and shall not  
28 be limited by any other provision of law.

29 (d) Notwithstanding any other provision of law, the court may  
30 strike the additional punishment provided for in this section if it  
31 determines that there are circumstances in mitigation of the  
32 additional punishment and states on the record its reasons for  
33 striking the additional punishment.

34 (e) *Alternatively, on or after the operative date of an applicable*  
35 *rule or rules proposed by the California Public Safety Commission,*  
36 *a person who violates this section shall be punished as provided*  
37 *in the applicable sentencing rules.*

38 ~~(e)~~

39 (f) The definitions contained in subdivision (e) of Section  
40 11353.1 shall apply to this section.

1     ~~(f)~~

2     (g) This section does not require either that notice be posted  
3 regarding the proscribed conduct or that the applicable 1,000-foot  
4 boundary limit be marked.

5     SEC. 64. *Section 11380.7 of the Health and Safety Code is*  
6 *amended to read:*

7     11380.7. (a) Notwithstanding any other provision of law, any  
8 person who is convicted of trafficking in heroin, cocaine, cocaine  
9 base, methamphetamine, or phencyclidine (PCP), or of a conspiracy  
10 to commit trafficking in heroin, cocaine, cocaine base,  
11 methamphetamine, or phencyclidine (PCP), in addition to the  
12 punishment imposed for the conviction, shall be imprisoned in the  
13 state prison for an additional one year if the violation occurred  
14 upon the grounds of, or within 1,000 feet of, a drug treatment  
15 center, detoxification facility, or homeless shelter.

16     (b) (1) The additional punishment provided in this section shall  
17 not be imposed unless the allegation is charged in the accusatory  
18 pleading and admitted by the defendant or found to be true by the  
19 trier of fact.

20     (2) The additional punishment provided in this section shall not  
21 be imposed if any other additional punishment is imposed pursuant  
22 to Section 11353.1, 11353.5, 11353.6, 11353.7, or 11380.1.

23     (c) *Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who violates this section shall be punished as provided*  
26 *in the applicable sentencing rules.*

27     ~~(e)~~

28     (d) Notwithstanding any other provision of law, the court may  
29 strike the additional punishment provided for in this section if it  
30 determines that there are circumstances in mitigation of the  
31 additional punishment and states on the record its reasons for  
32 striking the additional punishment. In determining whether or not  
33 to strike the additional punishment, the court shall consider the  
34 following factors and any relevant factors in aggravation or  
35 mitigation in Rules 4.421 and 4.423 of the California Rules of  
36 Court.

37     (1) The following factors indicate that the court should exercise  
38 its discretion to strike the additional punishment unless these  
39 factors are outweighed by factors in aggravation:

1 (A) The defendant is homeless, or is in a homeless shelter or  
2 transitional housing.

3 (B) The defendant lacks resources for the necessities of life.

4 (C) The defendant is addicted to or dependent on controlled  
5 substances.

6 (D) The defendant's motive was merely to maintain a steady  
7 supply of drugs for personal use.

8 (E) The defendant was recruited or exploited by a more culpable  
9 person to commit the crime.

10 (2) The following factors indicate that the court should not  
11 exercise discretion to strike the additional punishment unless these  
12 factors are outweighed by factors in mitigation:

13 (A) The defendant, in committing the crime, preyed on homeless  
14 persons, drug addicts or substance abusers who were seeking  
15 treatment, shelter or transitional services.

16 (B) The defendant's primary motive was monetary  
17 compensation.

18 (C) The defendant induced others, particularly homeless persons,  
19 drug addicts and substance abusers, to become involved in  
20 trafficking.

21 ~~(d)~~

22 (e) For the purposes of this section, the following terms have  
23 the following meanings:

24 (1) "Detoxification facility" means any premises, place, or  
25 building in which 24-hour residential nonmedical services are  
26 provided to adults who are recovering from problems related to  
27 alcohol, drug, or alcohol and drug misuse or abuse, and who need  
28 alcohol, drug, or alcohol and drug recovery treatment or  
29 detoxification services.

30 (2) "Drug treatment program" or "drug treatment" has the same  
31 meaning set forth in subdivision (b) of Section 1210 of the Penal  
32 Code.

33 (3) "Homeless shelter" includes, but is not limited to, emergency  
34 shelter housing, as well as transitional housing, but does not include  
35 domestic violence shelters. "Emergency shelter housing" is housing  
36 with minimal support services for homeless persons in which  
37 residency is limited to six months or less and is not related to the  
38 person's ability to pay. "Transitional housing" means housing with  
39 supportive services, including self-sufficiency development  
40 services, which is exclusively designed and targeted to help



1 recently homeless persons find permanent housing as soon as  
2 reasonably possible, limits residency to 24 months, and in which  
3 rent and service fees are based on ability to pay.

4 (4) “Trafficking” means any of the unlawful activities specified  
5 in Sections 11351, 11351.5, 11352, 11353, 11354, 11378, 11379,  
6 11379.6, and 11380. It does not include simple possession or drug  
7 use.

8 *SEC. 65. Section 11382 of the Health and Safety Code is*  
9 *amended to read:*

10 11382. (a) Every person who agrees, consents, or in any  
11 manner offers to unlawfully sell, furnish, transport, administer, or  
12 give any controlled substance which is (1) classified in Schedule  
13 III, IV, or V and which is not a narcotic drug, or (2) specified in  
14 subdivision (d) of Section 11054, except paragraphs (13), (14),  
15 (15), and (20) of subdivision (d), specified in paragraph (11) of  
16 subdivision (c) of Section 11056, or specified in subdivision (d),  
17 (e), or (f) of Section 11055, to any person, or offers, arranges, or  
18 negotiates to have that controlled substance unlawfully sold,  
19 delivered, transported, furnished, administered, or given to any  
20 person and then sells, delivers, furnishes, transports, administers,  
21 or gives, or offers, or arranges, or negotiates to have sold, delivered,  
22 transported, furnished, administered, or given to any person any  
23 other liquid, substance, or material in lieu of that controlled  
24 substance shall be punished by imprisonment in the county jail for  
25 not more than one year, or in the state prison.

26 (b) *Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates this section shall be punished as provided*  
29 *in the applicable sentencing rules.*

30 *SEC. 66. Section 11383 of the Health and Safety Code is*  
31 *amended to read:*

32 11383. (a) Any person who possesses at the same time any of  
33 the following combinations, a combination product thereof, or  
34 possesses any compound or mixture containing the chemicals listed  
35 in the following combinations, with the intent to manufacture  
36 phencyclidine (PCP) or any of its analogs specified in subdivision  
37 (d) of Section 11054 or subdivision (e) of Section 11055, is guilty  
38 of a felony and shall be punished by imprisonment in the state  
39 prison for two, four, or six years:

40 (1) Piperidine and cyclohexanone.

1 (2) Pyrrolidine and cyclohexanone.

2 (3) Morpholine and cyclohexanone.

3 (b) Any person who possesses the optical, positional, or  
4 geometric isomer of any of the compounds listed in this section,  
5 with the intent to manufacture these controlled substances is guilty  
6 of a felony and shall be punished by imprisonment in the state  
7 prison for two, four, or six years:

8 (1) Phencyclidine (PCP).

9 (2) Any analog of PCP specified in subdivision (d) of Section  
10 11054, or in subdivision (e) of Section 11055.

11 (c) Any person who possesses any compound or mixture  
12 containing piperidine, cyclohexanone, pyrrolidine, morpholine,  
13 1 - p h e n y l c y c l o h e x y l a m i n e ( P C A ) ,  
14 1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium  
15 bromide (PMB) with the intent to manufacture phencyclidine, is  
16 guilty of a felony and shall be punished by imprisonment in the  
17 state prison for two, four, or six years.

18 (d) Any person who possesses immediate precursors sufficient  
19 for the manufacture of piperidine, cyclohexanone, pyrrolidine,  
20 morpholine, or phenylmagnesium bromide (PMB) with the intent  
21 to manufacture phencyclidine, is guilty of a felony and shall be  
22 punished by imprisonment in the state prison for two, four, or six  
23 years.

24 (e) *Alternatively, on or after the operative date of an applicable*  
25 *rule or rules proposed by the California Public Safety Commission,*  
26 *a person who violates this section shall be punished as provided*  
27 *in the applicable sentencing rules.*

28 (e)

29 (f) This section does not apply to drug manufacturers licensed  
30 by this state or persons authorized by regulation of the Board of  
31 Pharmacy to possess those substances or combinations of  
32 substances.

33 *SEC. 67. Section 11383.5 of the Health and Safety Code is*  
34 *amended to read:*

35 11383.5. (a) Any person who possesses both methylamine and  
36 phenyl-2-propanone (phenylacetone) at the same time with the  
37 intent to manufacture methamphetamine, or who possesses both  
38 ethylamine and phenyl-2-propanone (phenylacetone) at the same  
39 time with the intent to manufacture N-ethylamphetamine, is guilty

1 of a felony and shall be punished by imprisonment in the state  
2 prison for two, four, or six years.

3 (b) (1) Any person who, with the intent to manufacture  
4 methamphetamine or any of its analogs specified in subdivision  
5 (d) of Section 11055, possesses ephedrine or pseudoephedrine, or  
6 any salts, isomers, or salts of isomers of ephedrine or  
7 pseudoephedrine, or who possesses a substance containing  
8 ephedrine or pseudoephedrine, or any salts, isomers, or salts of  
9 isomers of ephedrine or pseudoephedrine, or who possesses at the  
10 same time any of the following, or a combination product thereof,  
11 is guilty of a felony and shall be punished by imprisonment in the  
12 state prison for two, four, or six years:

13 (A) Ephedrine, pseudoephedrine, norpseudoephedrine,  
14 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,  
15 N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic  
16 acid.

17 (B) Ephedrine, pseudoephedrine, norpseudoephedrine,  
18 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,  
19 N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride  
20 and hydrogen gas.

21 (C) Ephedrine, pseudoephedrine, norpseudoephedrine,  
22 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,  
23 N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus  
24 pentachloride and hydrogen gas.

25 (D) Ephedrine, pseudoephedrine, norpseudoephedrine,  
26 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,  
27 N-ethylpseudoephedrine, chloroephedrine and  
28 chloropseudoephedrine, or phenylpropanolamine, plus any reducing  
29 agent.

30 (2) Any person who, with the intent to manufacture  
31 methamphetamine or any of its analogs specified in subdivision  
32 (d) of Section 11055, possesses hydriodic acid or a reducing agent  
33 or any product containing hydriodic acid or a reducing agent is  
34 guilty of a felony and shall be punished by imprisonment in the  
35 state prison for two, four, or six years.

36 (c) Any person who possesses the optical, positional, or  
37 geometric isomer of any of the compounds listed in this section,  
38 with the intent to manufacture any of the following controlled  
39 substances, is guilty of a felony and shall be punished by  
40 imprisonment in the state prison for two, four, or six years:

1 (1) Methamphetamine.

2 (2) Any analog of methamphetamine specified in subdivision  
3 (d) of Section 11055.

4 (3) N-ethylamphetamine.

5 (d) Any person who possesses immediate precursors sufficient  
6 for the manufacture of methylamine, ethylamine,  
7 phenyl-2-propanone, ephedrine, pseudoephedrine,  
8 norpseudoephedrine, N-methylephedrine, N-ethylephedrine,  
9 phenylpropanolamine, hydriodic acid or a reducing agent, thionyl  
10 chloride, or phosphorus pentachloride, with the intent to  
11 manufacture methamphetamine, is guilty of a felony and shall be  
12 punished by imprisonment in the state prison for two, four, or six  
13 years.

14 (e) Any person who possesses essential chemicals sufficient to  
15 manufacture hydriodic acid or a reducing agent, with the intent to  
16 manufacture methamphetamine, is guilty of a felony and shall be  
17 punished by imprisonment in the state prison for two, four, or six  
18 years.

19 (f) Any person who possesses any compound or mixture  
20 containing ephedrine, pseudoephedrine, norpseudoephedrine,  
21 N-methylephedrine, N-ethylephedrine, phenylpropanolamine,  
22 hydriodic acid or a reducing agent, thionyl chloride, or phosphorus  
23 pentachloride, with the intent to manufacture methamphetamine,  
24 is guilty of a felony and shall be punished by imprisonment in the  
25 state prison for two, four, or six years.

26 (g) *Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates this section shall be punished as provided*  
29 *in the applicable sentencing rules.*

30 ~~(g)~~

31 (h) For purposes of this section, a “reducing agent” for the  
32 purposes of manufacturing methamphetamine means an agent that  
33 causes reduction to occur by either donating a hydrogen atom to  
34 an organic compound or by removing an oxygen atom from an  
35 organic compound.

36 ~~(h)~~

37 (i) This section does not apply to drug manufacturers licensed  
38 by this state or persons authorized by regulation of the Board of  
39 Pharmacy to possess those substances or combinations of  
40 substances.

1     *SEC. 68. Section 11383.6 of the Health and Safety Code is*  
2     *amended to read:*

3     11383.6. (a) Any person who possesses at the same time any  
4     of the following combinations, a combination product thereof, or  
5     possesses any compound or mixture containing the chemicals listed  
6     in the following combinations, with the intent to sell, transfer, or  
7     otherwise furnish those chemicals, combinations, or mixtures to  
8     another person with the knowledge that they will be used to  
9     manufacture phencyclidine (PCP) or any of its analogs specified  
10    in subdivision (d) of Section 11054 or subdivision (e) of Section  
11    11055 is guilty of a felony and shall be punished by imprisonment  
12    in the state prison for 16 months, two, or three years:

13    (1) Piperidine and cyclohexanone.

14    (2) Pyrrolidine and cyclohexanone.

15    (3) Morpholine and cyclohexanone.

16    (b) Any person who possesses the optical, positional, or  
17    geometric isomer of any of the compounds listed in this section  
18    with the intent to sell, transfer, or otherwise furnish the isomer to  
19    another person with the knowledge that they will be used to  
20    manufacture these controlled substances is guilty of a felony and  
21    shall be punished by imprisonment in the state prison for 16  
22    months, two, or three years:

23    (1) Phencyclidine (PCP).

24    (2) Any analog of PCP specified in subdivision (d) of Section  
25    11054, or in subdivision (e) of Section 11055.

26    (c) Any person who possesses any compound or mixture  
27    containing piperidine, cyclohexanone, pyrrolidine, morpholine,  
28    1 - p h e n y l c y c l o h e x y l a m i n e                   ( P C A ) ,  
29    1-piperidinocyclohexanecarbonitrile (PCC), or phenylmagnesium  
30    bromide (PMB) with the intent to sell, transfer, or otherwise furnish  
31    the compound or mixture to another person with the knowledge  
32    that it will be used to manufacture phencyclidine is guilty of a  
33    felony and shall be punished by imprisonment in the state prison  
34    for 16 months, two, or three years.

35    (d) Any person who possesses immediate precursors sufficient  
36    for the manufacture of piperidine, cyclohexanone, pyrrolidine,  
37    morpholine, or phenylmagnesium bromide (PMB) with the intent  
38    to sell, transfer or otherwise furnish the immediate precursors to  
39    another person with the knowledge that they will be used to  
40    manufacture phencyclidine is guilty of a felony and shall be

1 punished by imprisonment in the state prison for 16 months, two,  
2 or three years.

3 *(e) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 ~~(e)~~

8 *(f) This section does not apply to drug manufacturers licensed*  
9 *by this state or persons authorized by regulation of the Board of*  
10 *Pharmacy to possess those substances or combinations of*  
11 *substances.*

12 *SEC. 69. Section 11383.7 of the Health and Safety Code is*  
13 *amended to read:*

14 11383.7. (a) Any person who possesses both methylamine and  
15 phenyl-2-propanone (phenylacetone) at the same time with the  
16 intent to sell, transfer, or otherwise furnish those chemicals to  
17 another person with the knowledge that they will be used to  
18 manufacture methamphetamine, or who possesses both ethylamine  
19 and phenyl-2-propanone (phenylacetone) at the same time with  
20 the intent to sell, transfer, or otherwise furnish those chemicals to  
21 another person with the knowledge that they will be used to  
22 manufacture methamphetamine is guilty of a felony and shall be  
23 punished by imprisonment in the state prison for 16 months, two,  
24 or three years.

25 (b) (1) Any person who possesses ephedrine or  
26 pseudoephedrine, or any salts, isomers, or salts of isomers of  
27 ephedrine or pseudoephedrine, or who possesses a substance  
28 containing ephedrine or pseudoephedrine, or any salts, isomers,  
29 or salts of isomers of ephedrine or pseudoephedrine, or who  
30 possesses at the same time any of the following, or a combination  
31 product thereof, with the intent to sell, transfer, or otherwise furnish  
32 those chemicals, substances, or products to another person with  
33 the knowledge that they will be used to manufacture  
34 methamphetamine or any of its analogs specified in subdivision  
35 (d) of Section 11055 is guilty of a felony and shall be punished by  
36 imprisonment in the state prison for 16 months, two, or three years:

37 (A) Ephedrine, pseudoephedrine, norpseudoephedrine,  
38 N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine,  
39 N-ethylpseudoephedrine, or phenylpropanolamine, plus hydriodic  
40 acid.

(B) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, thionyl chloride and hydrogen gas.

(C) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, or phenylpropanolamine, plus phosphorus pentachloride and hydrogen gas.

(D) Ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, N-methylpseudoephedrine, N-ethylpseudoephedrine, chloroephedrine and chloropseudoephedrine, or phenylpropanolamine, plus any reducing agent.

(2) Any person who possesses hydriodic acid or a reducing agent or any product containing hydriodic acid or a reducing agent with the intent to sell, transfer, or otherwise furnish that chemical, product, or substance to another person with the knowledge that they will be used to manufacture methamphetamine or any of its analogs specified in subdivision (d) of Section 11055 is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, two, or three years.

(c) Any person who possesses the optical, positional, or geometric isomer of any of the compounds listed in this section with the intent to sell, transfer, or otherwise furnish any of the compounds to another person with the knowledge that they will be used to manufacture these controlled substances is guilty of a felony and shall be punished by imprisonment in the state prison for 16 months, two, or three years:

(1) Methamphetamine.

(2) Any analog of methamphetamine specified in subdivision (d) of Section 11055.

(3) N-ethylamphetamine.

(d) Any person who possesses immediate precursors sufficient for the manufacture of methylamine, ethylamine, phenyl-2-propanone, ephedrine, pseudoephedrine, norpseudoephedrine, N-methylephedrine, N-ethylephedrine, phenylpropanolamine, hydriodic acid or a reducing agent, thionyl chloride, or phosphorus pentachloride, with the intent to sell, transfer, or otherwise furnish these substances to another person with the knowledge that they will be used to manufacture

1 methamphetamine is guilty of a felony and shall be punished by  
2 imprisonment in the state prison for 16 months, two, or three years.

3 (e) Any person who possesses essential chemicals sufficient to  
4 manufacture hydriodic acid or a reducing agent with the intent to  
5 sell, transfer, or otherwise furnish those chemicals to another  
6 person with the knowledge that they will be used to manufacture  
7 methamphetamine is guilty of a felony and shall be punished by  
8 imprisonment in the state prison for 16 months, two, or three years.

9 (f) Any person who possesses any compound or mixture  
10 containing ephedrine, pseudoephedrine, norpseudoephedrine,  
11 N-methylephedrine, N-ethylephedrine, phenylpropanolamine,  
12 hydriodic acid or a reducing agent, thionyl chloride, or phosphorus  
13 pentachloride, with the intent to sell, transfer, or otherwise furnish  
14 that compound or mixture to another person with the knowledge  
15 that they will be used to manufacture methamphetamine is guilty  
16 of a felony and shall be punished by imprisonment in the state  
17 prison for 16 months, two, or three years.

18 (g) *Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 ~~(g)~~

23 (h) For purposes of this section, a “reducing agent” for the  
24 purposes of manufacturing methamphetamine means an agent that  
25 causes reduction to occur by either donating a hydrogen atom to  
26 an organic compound or by removing an oxygen atom from an  
27 organic compound.

28 ~~(h)~~

29 (i) This section does not apply to drug manufacturers licensed  
30 by this state or persons authorized by regulation of the Board of  
31 Pharmacy to possess those substances or combinations of  
32 substances.

33 *SEC. 70. Section 11390 of the Health and Safety Code is*  
34 *amended to read:*

35 11390. (a) Except as otherwise authorized by law, every person  
36 who, with intent to produce a controlled substance specified in  
37 paragraph (18) or (19) of subdivision (d) of Section 11054,  
38 cultivates any spores or mycelium capable of producing mushrooms  
39 or other material which contains such a controlled substance shall



be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 71. Section 11391 of the Health and Safety Code is amended to read:

11391. (a) Except as otherwise authorized by law, every person who transports, imports into this state, sells, furnishes, gives away, or offers to transport, import into this state, sell, furnish, or give away any spores or mycelium capable of producing mushrooms or other material which contain a controlled substance specified in paragraph (18) or (19) of subdivision (d) of Section 11054 for the purpose of facilitating a violation of Section 11390 shall be punished by imprisonment in the county jail for a period of not more than one year or in the state prison.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 72. Section 11536 of the Health and Safety Code is amended to read:

11536. A violation of any provision of this chapter is a misdemeanor *or, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a violation shall be punished as provided in the applicable sentencing rules.*

SEC. 73. Section 11550 of the Health and Safety Code is amended to read:

11550. (a) No person shall use, or be under the influence of any controlled substance which is (1) specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), (21), (22), or (23) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (1) or (2) of subdivision (d) or in paragraph (3) of subdivision (e) of Section 11055, or (2) a narcotic drug classified in Schedule III, IV, or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall

1 be the burden of the defense to show that it comes within the  
2 exception. Any person convicted of violating this subdivision is  
3 guilty of a misdemeanor and shall be sentenced to serve a term of  
4 not less than 90 days or more than one year in a county jail. The  
5 court may place a person convicted under this subdivision on  
6 probation for a period not to exceed five years and, except as  
7 provided in subdivision (c), shall in all cases in which probation  
8 is granted require, as a condition thereof, that the person be  
9 confined in a county jail for at least 90 days. Other than as provided  
10 by subdivision (c), in no event shall the court have the power to  
11 absolve a person who violates this subdivision from the obligation  
12 of spending at least 90 days in confinement in a county jail.

13 (b) Any person who (1) is convicted of violating subdivision  
14 (a) when the offense occurred within seven years of that person  
15 being convicted of two or more separate violations of that  
16 subdivision, and (2) refuses to complete a licensed drug  
17 rehabilitation program offered by the court pursuant to subdivision  
18 (c), shall be punished by imprisonment in a county jail for not less  
19 than 180 days nor more than one year. In no event does the court  
20 have the power to absolve a person convicted of a violation of  
21 subdivision (a) that is punishable under this subdivision from the  
22 obligation of spending at least 180 days in confinement in a county  
23 jail unless there are no licensed drug rehabilitation programs  
24 reasonably available.

25 For the purpose of this section, a drug rehabilitation program  
26 shall not be considered reasonably available unless the person is  
27 required to pay no more than the court determines that he or she  
28 is reasonably able to pay, in order to participate in the program.

29 (c) The court may, when it would be in the interest of justice,  
30 permit any person convicted of a violation of subdivision (a)  
31 punishable under subdivision (a) or (b) to complete a licensed drug  
32 rehabilitation program in lieu of part or all of the imprisonment in  
33 the county jail. As a condition of sentencing, the court may require  
34 the offender to pay all or a portion of the drug rehabilitation  
35 program.

36 In order to alleviate jail overcrowding and to provide recidivist  
37 offenders with a reasonable opportunity to seek rehabilitation  
38 pursuant to this subdivision, counties are encouraged to include  
39 provisions to augment licensed drug rehabilitation programs in

1 their substance abuse proposals and applications submitted to the  
2 state for federal and state drug abuse funds.

3 (d) In addition to any fine assessed under this section, the judge  
4 may assess a fine not to exceed seventy dollars (\$70) against any  
5 person who violates this section, with the proceeds of this fine to  
6 be used in accordance with Section 1463.23 of the Penal Code.  
7 The court shall, however, take into consideration the defendant's  
8 ability to pay, and no defendant shall be denied probation because  
9 of his or her inability to pay the fine permitted under this  
10 subdivision.

11 (e) Notwithstanding subdivisions (a) and (b) or any other  
12 provision of law, any person who is unlawfully under the influence  
13 of cocaine, cocaine base, heroin, methamphetamine, or  
14 phencyclidine while in the immediate personal possession of a  
15 loaded, operable firearm is guilty of a public offense punishable  
16 by imprisonment in a county jail for not exceeding one year or in  
17 state prison.

18 As used in this subdivision "immediate personal possession"  
19 includes, but is not limited to, the interior passenger compartment  
20 of a motor vehicle.

21 (f) Every person who violates subdivision (e) is punishable upon  
22 the second and each subsequent conviction by imprisonment in  
23 the state prison for two, three, or four years.

24 (g) Nothing in this section prevents deferred entry of judgment  
25 or a defendant's participation in a preguilty plea drug court program  
26 under Chapter 2.5 (commencing with Section 1000) of Title 6 of  
27 Part 2 of the Penal Code unless the person is charged with violating  
28 subdivision (b) or (c) of Section 243 of the Penal Code. A person  
29 charged with violating this section by being under the influence  
30 of any controlled substance which is specified in paragraph (21),  
31 (22), or (23) of subdivision (d) of Section 11054 or in paragraph  
32 (3) of subdivision (e) of Section 11055 and with violating either  
33 subdivision (b) or (c) of Section 243 of the Penal Code or with a  
34 violation of subdivision (e) shall be ineligible for deferred entry  
35 of judgment or a preguilty plea drug court program.

36 (h) *Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates this section shall be punished as provided*  
39 *in the applicable sentencing rules.*

1     *SEC. 74. Section 11880 of the Insurance Code is amended to*  
2     *read:*

3     11880. (a) It is unlawful to make or cause to be made any  
4     knowingly false or fraudulent statement, whether made orally or  
5     in writing, of any fact material to the determination of the premium,  
6     rate, or cost of any policy of workers' compensation insurance  
7     issued or administered by the State Compensation Insurance Fund  
8     for the purpose of reducing the premium, rate, or cost of the  
9     insurance. Any person convicted of violating this subdivision shall  
10    be punished by imprisonment in ~~the~~ a county jail for one year, or  
11    in the state prison for two, three, or five years, or by a fine not  
12    exceeding fifty thousand dollars (\$50,000), or double the value of  
13    the fraud, whichever is greater, or by both imprisonment and fine.

14    (b) Any person who violates subdivision (a) and who has a prior  
15    felony conviction of the offense set forth in that subdivision shall  
16    receive a two-year enhancement for each prior conviction in  
17    addition to the sentence provided in subdivision (a). The existence  
18    of any fact that would subject a person to a penalty enhancement  
19    shall be alleged in the information or indictment and either admitted  
20    by the defendant in open court, or found to be true by the jury  
21    trying the issue of guilt or by the court where guilt is established  
22    by plea of guilty or nolo contendere or by trial by the court sitting  
23    without a jury.

24    (c) *Alternatively, on or after the operative date of an applicable*  
25    *rule or rules proposed by the California Public Safety Commission,*  
26    *a person who violates this section shall be punished as provided*  
27    *in the applicable sentencing rules.*

28    *SEC. 75. Section 421 of the Military and Veterans Code is*  
29    *amended to read:*

30    421. Any person who secretes, sells, disposes of, offers for  
31    sale, purchases, retains after demand made by a commissioned  
32    officer of the National Guard or of the unorganized militia when  
33    called into the service of the state or Naval Militia, or in any  
34    manner pawns or pledges any arms, uniforms, equipment, or  
35    military or naval property of the state or of the United States, or  
36    of any organization of the active militia or of the unorganized  
37    militia when called into the service of the state is guilty of a felony  
38    if said arms, uniforms, equipments, or military or naval property  
39    of the state or of the United States is of a value of ~~four hundred~~

1 ~~dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or more, otherwise  
2 such person is guilty of a misdemeanor.

3 *SEC. 76. Section 18 of the Penal Code is amended to read:*

4 18. (a) Except in cases where a different punishment is  
5 prescribed by any law of this state, every offense declared to be a  
6 felony, or to be punishable by imprisonment in a state prison, is  
7 punishable by imprisonment in any of the state prisons for 16  
8 months, or two or three years; provided, however, every offense  
9 which is prescribed by any law of the state to be a felony  
10 punishable by imprisonment in any of the state prisons or by a  
11 fine, but without an alternate sentence to the county jail, may be  
12 punishable by imprisonment in the county jail not exceeding one  
13 year or by a fine, or by both.

14 (b) *Notwithstanding the foregoing, on or after the operative*  
15 *date of a rule or rules proposed by the California Public Safety*  
16 *Commission applicable to a particular felony, that offense is*  
17 *punishable as provided in the applicable sentencing rules.*

18 *SEC. 77. Section 19 of the Penal Code is amended to read:*

19 19. (a) Except in cases where a different punishment is  
20 prescribed by any law of this state, every offense declared to be a  
21 misdemeanor is punishable by imprisonment in the county jail not  
22 exceeding six months, or by fine not exceeding one thousand  
23 dollars (\$1,000), or by both.

24 (b) *Notwithstanding the foregoing, on or after the operative*  
25 *date of a rule or rules proposed by the California Public Safety*  
26 *Commission applicable to a particular misdemeanor, that offense*  
27 *is punishable as provided in the applicable sentencing rules.*

28 *SEC. 78. Section 72 of the Penal Code is amended to read:*

29 72. (a) Every person who, with intent to defraud, presents for  
30 allowance or for payment to any state board or officer, or to any  
31 county, city, or district board or officer, authorized to allow or pay  
32 the same if genuine, any false or fraudulent claim, bill, account,  
33 voucher, or writing, is punishable either by imprisonment in ~~the~~  
34 *a* county jail for a period of not more than one year, by a fine of  
35 not exceeding one thousand dollars (\$1,000), or by both ~~such that~~  
36 imprisonment and fine, or by imprisonment in the state prison, by  
37 a fine of not exceeding ten thousand dollars (\$10,000), or by both  
38 ~~such that~~ imprisonment and fine.

39 As used in this section “officer” includes a “carrier,” as defined  
40 in subdivision (a) of Section 14124.70 of the Welfare and

1 Institutions Code, authorized to act as an agent for a state board  
2 or officer or a county, city, or district board or officer, as the case  
3 may be.

4 *(b) Alternatively, on or after the operative date of an applicable*  
5 *rule or rules proposed by the California Public Safety Commission,*  
6 *a person who violates this section shall be punished as provided*  
7 *in the applicable sentencing rules.*

8 SEC. 79. Section 72.5 of the Penal Code is amended to read:

9 72.5. (a) Every person who, knowing a claim seeks public  
10 funds for reimbursement of costs incurred in attending a political  
11 function organized to support or oppose any political party or  
12 political candidate, presents such a claim for allowance or for  
13 payment to any state board or officer, or to any county, city, or  
14 district board or officer authorized to allow or pay such claims, is  
15 punishable either by imprisonment in ~~the~~ a county jail for a period  
16 of not more than one year, by a fine of not exceeding one thousand  
17 dollars (\$1,000), or by both ~~such~~ that imprisonment and fine, or  
18 by imprisonment in the state prison, by a fine ~~of~~ not exceeding ten  
19 thousand dollars (\$10,000), or by both ~~such~~ that imprisonment  
20 and fine.

21 (b) Every person who, knowing a claim seeks public funds for  
22 reimbursement of costs incurred to gain admittance to a political  
23 function expressly organized to support or oppose any ballot  
24 measure, presents such a claim for allowance or for payment to  
25 any state board or officer, or to any county, city, or district board  
26 or officer authorized to allow or pay such claims is punishable  
27 either by imprisonment in ~~the~~ a county jail for a period of not more  
28 than one year, by a fine of not exceeding one thousand dollars  
29 (\$1,000), or by both ~~such~~ that imprisonment and fine, or by  
30 imprisonment in the state prison, by a fine ~~of~~ not exceeding ten  
31 thousand dollars (\$10,000), or by both ~~such~~ that imprisonment  
32 and fine.

33 *(c) Alternatively, on or after the operative date of an applicable*  
34 *rule or rules proposed by the California Public Safety Commission,*  
35 *a person who violates this section shall be punished as provided*  
36 *in the applicable sentencing rules.*

37 SEC. 80. Section 115.1 of the Penal Code is amended to read:

38 115.1. (a) The Legislature finds and declares that the voters  
39 of California are entitled to accurate representations in materials  
40 that are directed to them in efforts to influence how they vote.

1 (b) No person shall publish or cause to be published, with intent  
2 to deceive, any campaign advertisement containing a signature  
3 that the person knows to be unauthorized.

4 (c) For purposes of this section, “campaign advertisement”  
5 means any communication directed to voters by means of a mass  
6 mailing as defined in Section 82041.5 of the Government Code,  
7 a paid television, radio, or newspaper advertisement, an outdoor  
8 advertisement, or any other printed matter, if the expenditures for  
9 that communication are required to be reported by Chapter 4  
10 (commencing with Section 84100) of Title 9 of the Government  
11 Code.

12 (d) For purposes of this section, an authorization to use a  
13 signature shall be oral or written.

14 (e) Nothing in this section shall be construed to prohibit a person  
15 from publishing or causing to be published a reproduction of all  
16 or part of a document containing an actual or authorized signature,  
17 provided that the signature so reproduced shall not, with the intent  
18 to deceive, be incorporated into another document in a manner  
19 that falsely suggests that the person whose signature is reproduced  
20 has signed the other document.

21 (f) Any knowing or willful violation of this section is a public  
22 offense punishable by imprisonment in the state prison or in a  
23 county jail, or by a fine not to exceed fifty thousand dollars  
24 (\$50,000), or by both that fine and imprisonment.

25 (g) As used in this section, “signature” means either of the  
26 following:

27 (1) A handwritten or mechanical signature, or a copy thereof.

28 (2) Any representation of a person’s name, including, but not  
29 limited to, a printed or typewritten representation, that serves the  
30 same purpose as a handwritten or mechanical signature.

31 (h) *Alternatively, on or after the operative date of an applicable*  
32 *rule or rules proposed by the California Public Safety Commission,*  
33 *a person who violates this section shall be punished as provided*  
34 *in the applicable sentencing rules.*

35 SEC. 81. *Section 126 of the Penal Code is amended to read:*

36 126. Perjury is punishable by imprisonment in the state prison  
37 for two, three or four years *or, on or after the operative date of an*  
38 *applicable rule or rules proposed by the California Public Safety*  
39 *Commission, is punishable as provided in the applicable sentencing*  
40 *rules.*

1     *SEC. 82. Section 148.1 of the Penal Code is amended to read:*

2     148.1. (a) Any person who reports to any peace officer listed  
3     in Section 830.1 or 830.2, or subdivision (a) of Section 830.33,  
4     employee of a fire department or fire service, district attorney,  
5     newspaper, radio station, television station, deputy district attorney,  
6     employees of the Department of Justice, employees of an airline,  
7     employees of an airport, employees of a railroad or busline, an  
8     employee of a telephone company, occupants of a building or a  
9     news reporter in the employ of a newspaper or radio or television  
10    station, that a bomb or other explosive has been or will be placed  
11    or secreted in any public or private place, knowing that the report  
12    is false, is guilty of a crime punishable by imprisonment in the  
13    state prison, or imprisonment in ~~the~~ a county jail not to exceed  
14    one year.

15    (b) Any person who reports to any other peace officer defined  
16    in Chapter 4.5 (commencing with Section 830) of Title 3 of Part  
17    2 that a bomb or other explosive has been or will be placed or  
18    secreted in any public or private place, knowing that the report is  
19    false, is guilty of a crime punishable by imprisonment in the state  
20    prison or in ~~the~~ a county jail not to exceed one year if (1) the false  
21    information is given while the peace officer is engaged in the  
22    performance of his or her duties as a peace officer and (2) the  
23    person providing the false information knows or should have  
24    known that the person receiving the information is a peace officer.

25    (c) Any person who maliciously informs any other person that  
26    a bomb or other explosive has been or will be placed or secreted  
27    in any public or private place, knowing that the information is  
28    false, is guilty of a crime punishable by imprisonment in the state  
29    prison, or imprisonment in ~~the~~ a county jail not to exceed one year.

30    (d) Any person who maliciously gives, mails, sends, or causes  
31    to be sent any false or facsimile bomb to another person, or places,  
32    causes to be placed, or maliciously possesses any false or facsimile  
33    bomb, with the intent to cause another to fear for his or her personal  
34    safety or the safety of others, is guilty of a crime punishable by  
35    imprisonment in the state prison, or imprisonment in ~~the~~ a county  
36    jail not to exceed one year.

37    (e) *Alternatively, on or after the operative date of an applicable*  
38    *rule or rules proposed by the California Public Safety Commission,*  
39    *a person who violates this section shall be punished as provided*  
40    *in the applicable sentencing rules.*



1     *SEC. 83. Section 154 of the Penal Code is amended to read:*

2     154. (a) Every debtor who fraudulently removes his or her  
3     property or effects out of this state, or who fraudulently sells,  
4     conveys, assigns or conceals his or her property with intent to  
5     defraud, hinder or delay his or her creditors of their rights, claims,  
6     or demands, is punishable by imprisonment in the county jail not  
7     exceeding one year, or by fine not exceeding one thousand dollars  
8     (\$1,000), or by both that fine and imprisonment.

9     (b) Where the property so removed, sold, conveyed, assigned,  
10    or concealed consists of a stock in trade, or a part thereof, of a  
11    value exceeding ~~one hundred dollars (\$100)~~ *two hundred fifty*  
12    *dollars (\$250)*, the offense shall be a felony and punishable as  
13    such.

14    *SEC. 84. Section 155 of the Penal Code is amended to read:*

15    155. (a) Every person against whom an action is pending, or  
16    against whom a judgment has been rendered for the recovery of  
17    any personal property, who fraudulently conceals, sells, or disposes  
18    of that property, with intent to hinder, delay, or defraud the person  
19    bringing the action or recovering the judgment, or with such intent  
20    removes that property beyond the limits of the county in which it  
21    may be at the time of the commencement of the action or the  
22    rendering of the judgment, is punishable by imprisonment in a  
23    county jail not exceeding one year, or by fine not exceeding one  
24    thousand dollars (\$1,000), or by both that fine and imprisonment.

25    (b) Where the property so concealed, sold, disposed of, or  
26    removed consists of a stock in trade, or a part thereof, of a value  
27    exceeding ~~one hundred dollars (\$100)~~ *two hundred fifty dollars*  
28    *(\$250)*, the offenses shall be a felony and punishable as such.

29    *SEC. 85. Section 182 of the Penal Code is amended to read:*

30    182. (a) If two or more persons conspire:

31    (1) To commit any crime.

32    (2) Falsely and maliciously to indict another for any crime, or  
33    to procure another to be charged or arrested for any crime.

34    (3) Falsely to move or maintain any suit, action, or proceeding.

35    (4) To cheat and defraud any person of any property, by any  
36    means which are in themselves criminal, or to obtain money or  
37    property by false pretenses or by false promises with fraudulent  
38    intent not to perform those promises.

1 (5) To commit any act injurious to the public health, to public  
2 morals, or to pervert or obstruct justice, or the due administration  
3 of the laws.

4 (6) To commit any crime against the person of the President or  
5 Vice President of the United States, the Governor of any state or  
6 territory, any United States justice or judge, or the secretary of any  
7 of the executive departments of the United States.

8 They are punishable as follows:

9 When they conspire to commit any crime against the person of  
10 any official specified in paragraph (6), they are guilty of a felony  
11 and are punishable by imprisonment in the state prison for five,  
12 seven, or nine years.

13 When they conspire to commit any other felony, they shall be  
14 punishable in the same manner and to the same extent as is  
15 provided for the punishment of that felony. If the felony is one for  
16 which different punishments are prescribed for different degrees,  
17 the jury or court which finds the defendant guilty thereof shall  
18 determine the degree of the felony the defendant conspired to  
19 commit. If the degree is not so determined, the punishment for  
20 conspiracy to commit the felony shall be that prescribed for the  
21 lesser degree, except in the case of conspiracy to commit murder,  
22 in which case the punishment shall be that prescribed for murder  
23 in the first degree.

24 If the felony is conspiracy to commit two or more felonies which  
25 have different punishments and the commission of those felonies  
26 constitute but one offense of conspiracy, the penalty shall be that  
27 prescribed for the felony which has the greater maximum term.

28 When they conspire to do an act described in paragraph (4), they  
29 shall be punishable by imprisonment in the state prison, or by  
30 imprisonment in ~~the~~ a county jail for not more than one year, or  
31 by a fine not exceeding ten thousand dollars (\$10,000), or by both  
32 that imprisonment and fine.

33 When they conspire to do any of the other acts described in this  
34 section, they shall be punishable by imprisonment in ~~the~~ a county  
35 jail for not more than one year, or in the state prison, or by a fine  
36 not exceeding ten thousand dollars (\$10,000), or by both that  
37 imprisonment and fine. When they receive a felony conviction for  
38 conspiring to commit identity theft, as defined in Section 530.5,  
39 the court may impose a fine of up to twenty-five thousand dollars  
40 (\$25,000).

1 All cases of conspiracy may be prosecuted and tried in the  
2 superior court of any county in which any overt act tending to  
3 effect the conspiracy shall be done.

4 (b) Upon a trial for conspiracy, in a case where an overt act is  
5 necessary to constitute the offense, the defendant cannot be  
6 convicted unless one or more overt acts are expressly alleged in  
7 the indictment or information, nor unless one of the acts alleged  
8 is proved; but other overt acts not alleged may be given in  
9 evidence.

10 (c) *Alternatively, on or after the operative date of an applicable*  
11 *rule or rules proposed by the California Public Safety Commission,*  
12 *a person who violates this section shall be punished as provided*  
13 *in the applicable sentencing rules.*

14 SEC. 86. Section 186.10 of the Penal Code is amended to read:

15 186.10. (a) Any person who conducts or attempts to conduct  
16 a transaction or more than one transaction within a seven-day  
17 period involving a monetary instrument or instruments of a total  
18 value exceeding five thousand dollars (\$5,000), or a total value  
19 exceeding twenty-five thousand dollars (\$25,000) within a 30-day  
20 period, through one or more financial institutions (1) with the  
21 specific intent to promote, manage, establish, carry on, or facilitate  
22 the promotion, management, establishment, or carrying on of any  
23 criminal activity, or (2) knowing that the monetary instrument  
24 represents the proceeds of, or is derived directly or indirectly from  
25 the proceeds of, criminal activity, is guilty of the crime of money  
26 laundering. The aggregation periods do not create an obligation  
27 for financial institutions to record, report, create, or implement  
28 tracking systems or otherwise monitor transactions involving  
29 monetary instruments in any time period. In consideration of the  
30 constitutional right to counsel afforded by the Sixth Amendment  
31 to the United States Constitution and Section 15 of Article I of the  
32 California Constitution, when a case involves an attorney who  
33 accepts a fee for representing a client in a criminal investigation  
34 or proceeding, the prosecution shall additionally be required to  
35 prove that the monetary instrument was accepted by the attorney  
36 with the intent to disguise or aid in disguising the source of the  
37 funds or the nature of the criminal activity.

38 A violation of this section shall be punished by imprisonment  
39 in a county jail for not more than one year or in the state prison,  
40 by a fine of not more than two hundred fifty thousand dollars

1 (\$250,000) or twice the value of the property transacted, whichever  
2 is greater, or by both that imprisonment and fine. However, for a  
3 second or subsequent conviction for a violation of this section, the  
4 maximum fine that may be imposed is five hundred thousand  
5 dollars (\$500,000) or five times the value of the property  
6 transacted, whichever is greater.

7 (b) Notwithstanding any other law, for purposes of this section,  
8 each individual transaction conducted in excess of five thousand  
9 dollars (\$5,000), each series of transactions conducted within a  
10 seven-day period that total in excess of five thousand dollars  
11 (\$5,000), or each series of transactions conducted within a 30-day  
12 period that total in excess of twenty-five thousand dollars  
13 (\$25,000), shall constitute a separate, punishable offense.

14 (c) (1) Any person who is punished under subdivision (a) by  
15 imprisonment in the state prison shall also be subject to an  
16 additional term of imprisonment in the state prison as follows:

17 (A) If the value of the transaction or transactions exceeds fifty  
18 thousand dollars (\$50,000) but is less than one hundred fifty  
19 thousand dollars (\$150,000), the court, in addition to and  
20 consecutive to the felony punishment otherwise imposed pursuant  
21 to this section, shall impose an additional term of imprisonment  
22 of one year.

23 (B) If the value of the transaction or transactions exceeds one  
24 hundred fifty thousand dollars (\$150,000) but is less than one  
25 million dollars (\$1,000,000), the court, in addition to and  
26 consecutive to the felony punishment otherwise imposed pursuant  
27 to this section, shall impose an additional term of imprisonment  
28 of two years.

29 (C) If the value of the transaction or transactions exceeds one  
30 million dollars (\$1,000,000), but is less than two million five  
31 hundred thousand dollars (\$2,500,000), the court, in addition to  
32 and consecutive to the felony punishment otherwise imposed  
33 pursuant to this section, shall impose an additional term of  
34 imprisonment of three years.

35 (D) If the value of the transaction or transactions exceeds two  
36 million five hundred thousand dollars (\$2,500,000), the court, in  
37 addition to and consecutive to the felony punishment otherwise  
38 prescribed by this section, shall impose an additional term of  
39 imprisonment of four years.

(2) (A) An additional term of imprisonment as provided for in this subdivision shall not be imposed unless the facts of a transaction or transactions, or attempted transaction or transactions, of a value described in paragraph (1), are charged in the accusatory pleading, and are either admitted to by the defendant or are found to be true by the trier of fact.

(B) An additional term of imprisonment as provided for in this subdivision may be imposed with respect to an accusatory pleading charging multiple violations of this section, regardless of whether any single violation charged in that pleading involves a transaction or attempted transaction of a value covered by paragraph (1), if the violations charged in that pleading arise from a common scheme or plan and the aggregate value of the alleged transactions or attempted transactions is of a value covered by paragraph (1).

(d) All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

*(e) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 87. Section 186.11 of the Penal Code is amended to read:

186.11. (a) (1) Any person who commits two or more related felonies, a material element of which is fraud or embezzlement, which involve a pattern of related felony conduct, and the pattern of related felony conduct involves the taking of, or results in the loss by another person or entity of, more than one hundred thousand dollars (\$100,000), shall be punished, upon conviction of two or more felonies in a single criminal proceeding, in addition and consecutive to the punishment prescribed for the felony offenses of which he or she has been convicted, by an additional term of imprisonment in the state prison as specified in paragraph (2) or (3). This enhancement shall be known as the aggravated white collar crime enhancement. The aggravated white collar crime enhancement shall only be imposed once in a single criminal proceeding. For purposes of this section, “pattern of related felony conduct” means engaging in at least two felonies that have the same or similar purpose, result, principals, victims, or methods of commission, or are otherwise interrelated by distinguishing characteristics, and that are not isolated events. For purposes of this section, “two or more related felonies” means felonies

1 committed against two or more separate victims, or against the  
2 same victim on two or more separate occasions.

3 (2) If the pattern of related felony conduct involves the taking  
4 of, or results in the loss by another person or entity of, more than  
5 five hundred thousand dollars (\$500,000), the additional term of  
6 punishment shall be two, three, or five years in the state prison.

7 (3) If the pattern of related felony conduct involves the taking  
8 of, or results in the loss by another person or entity of, more than  
9 one hundred thousand dollars (\$100,000), but not more than five  
10 hundred thousand dollars (\$500,000), the additional term of  
11 punishment shall be the term specified in paragraph (1) or (2) of  
12 subdivision (a) of Section 12022.6.

13 (b) (1) The additional prison term and penalties provided for  
14 in subdivisions (a), (c), and (d) shall not be imposed unless the  
15 facts set forth in subdivision (a) are charged in the accusatory  
16 pleading and admitted or found to be true by the trier of fact.

17 (2) The additional prison term provided in paragraph (2) of  
18 subdivision (a) shall be in addition to any other punishment  
19 provided by law, including Section 12022.6, and shall not be  
20 limited by any other provision of law.

21 (c) Any person convicted of two or more felonies, as specified  
22 in subdivision (a), shall also be liable for a fine not to exceed five  
23 hundred thousand dollars (\$500,000) or double the value of the  
24 taking, whichever is greater, if the existence of facts that would  
25 make the person subject to the aggravated white collar crime  
26 enhancement have been admitted or found to be true by the trier  
27 of fact. However, if the pattern of related felony conduct involves  
28 the taking of more than one hundred thousand dollars (\$100,000),  
29 but not more than five hundred thousand dollars (\$500,000), the  
30 fine shall not exceed one hundred thousand dollars (\$100,000) or  
31 double the value of the taking, whichever is greater.

32 (d) Any person convicted of two or more felonies, as specified  
33 in subdivision (a), shall be liable for the costs of restitution to  
34 victims of the pattern of fraudulent or unlawful conduct, if the  
35 existence of facts that would make the person subject to the  
36 aggravated white collar crime enhancement have been admitted  
37 or found to be true by the trier of fact.

38 (e) (1) If a person is alleged to have committed two or more  
39 felonies, as specified in subdivision (a), and the aggravated white  
40 collar crime enhancement is also charged, any asset or property

1 that is in the control of that person, and any asset or property that  
2 has been transferred by that person to a third party, subsequent to  
3 the commission of any criminal act alleged pursuant to subdivision  
4 (a), other than in a bona fide purchase, whether found within or  
5 outside the state, may be preserved by the superior court in order  
6 to pay restitution and fines imposed pursuant to this section. Upon  
7 conviction of two or more felonies, as specified in subdivision (a),  
8 this property may be levied upon by the superior court to pay  
9 restitution and fines imposed pursuant to this section if the  
10 existence of facts that would make the person subject to the  
11 aggravated white collar crime enhancement have been admitted  
12 or found to be true by the trier of fact.

13 (2) To prevent dissipation or secreting of assets or property, the  
14 prosecuting agency may, at the same time as or subsequent to the  
15 filing of a complaint or indictment charging two or more felonies,  
16 as specified in subdivision (a), and the enhancement specified in  
17 subdivision (a), file a petition with the criminal division of the  
18 superior court of the county in which the accusatory pleading was  
19 filed, seeking a temporary restraining order, preliminary injunction,  
20 the appointment of a receiver, or any other protective relief  
21 necessary to preserve the property or assets. This petition shall  
22 commence a proceeding that shall be pendent to the criminal  
23 proceeding and maintained solely to affect the criminal remedies  
24 provided for in this section. The proceeding shall not be subject  
25 to or governed by the provisions of the Civil Discovery Act as set  
26 forth in Title 4 (commencing with Section 2016.010) of Part 4 of  
27 the Code of Civil Procedure. The petition shall allege that the  
28 defendant has been charged with two or more felonies, as specified  
29 in subdivision (a), and is subject to the aggravated white collar  
30 crime enhancement specified in subdivision (a). The petition shall  
31 identify that criminal proceeding and the assets and property to be  
32 affected by an order issued pursuant to this section.

33 (3) A notice regarding the petition shall be provided, by personal  
34 service or registered mail, to every person who may have an interest  
35 in the property specified in the petition. Additionally, the notice  
36 shall be published for at least three successive weeks in a  
37 newspaper of general circulation in the county where the property  
38 affected by an order issued pursuant to this section is located. The  
39 notice shall state that any interested person may file a verified  
40 claim with the superior court stating the nature and amount of their

1 claimed interest. The notice shall set forth the time within which  
2 a claim of interest in the protected property is required to be filed.

3 (4) If the property to be preserved is real property, the  
4 prosecuting agency shall record, at the time of filing the petition,  
5 a lis pendens in each county in which the real property is situated  
6 which specifically identifies the property by legal description, the  
7 name of the owner of record as shown on the latest equalized  
8 assessment roll, and the assessor's parcel number.

9 (5) If the property to be preserved are assets under the control  
10 of a banking or financial institution, the prosecuting agency, at the  
11 time of the filing of the petition, may obtain an order from the  
12 court directing the banking or financial institution to immediately  
13 disclose the account numbers and value of the assets of the accused  
14 held by the banking or financial institution. The prosecuting agency  
15 shall file a supplemental petition, specifically identifying which  
16 banking or financial institution accounts shall be subject to a  
17 temporary restraining order, preliminary injunction, or other  
18 protective remedy.

19 (6) Any person claiming an interest in the protected property  
20 may, at any time within 30 days from the date of the first  
21 publication of the notice of the petition, or within 30 days after  
22 receipt of actual notice, file with the superior court of the county  
23 in which the action is pending a verified claim stating the nature  
24 and amount of his or her interest in the property or assets. A  
25 verified copy of the claim shall be served by the claimant on the  
26 Attorney General or district attorney, as appropriate.

27 (7) The imposition of fines and restitution pursuant to this  
28 section shall be determined by the superior court in which the  
29 underlying criminal offense is sentenced. Any judge who is  
30 assigned to the criminal division of the superior court in the county  
31 where the petition is filed may issue a temporary restraining order  
32 in conjunction with, or subsequent to, the filing of an allegation  
33 pursuant to this section. Any subsequent hearing on the petition  
34 shall also be heard by a judge assigned to the criminal division of  
35 the superior court in the county in which the petition is filed. At  
36 the time of the filing of an information or indictment in the  
37 underlying criminal case, any subsequent hearing on the petition  
38 shall be heard by the superior court judge assigned to the  
39 underlying criminal case.



1 (f) Concurrent with or subsequent to the filing of the petition,  
2 the prosecuting agency may move the superior court for, and the  
3 superior court may issue, the following pendente lite orders to  
4 preserve the status quo of the property alleged in the petition:

5 (1) An injunction to restrain any person from transferring,  
6 encumbering, hypothecating, or otherwise disposing of that  
7 property.

8 (2) Appointment of a receiver to take possession of, care for,  
9 manage, and operate the assets and properties so that the property  
10 may be maintained and preserved. The court may order that a  
11 receiver appointed pursuant to this section shall be compensated  
12 for all reasonable expenditures made or incurred by him or her in  
13 connection with the possession, care, management, and operation  
14 of any property or assets that are subject to the provisions of this  
15 section.

16 (3) A bond or other undertaking, in lieu of other orders, of a  
17 value sufficient to ensure the satisfaction of restitution and fines  
18 imposed pursuant to this section.

19 (g) (1) No preliminary injunction may be granted or receiver  
20 appointed by the court without notice that meets the requirements  
21 of paragraph (3) of subdivision (e) to all known and reasonably  
22 ascertainable interested parties and upon a hearing to determine  
23 that an order is necessary to preserve the property pending the  
24 outcome of the criminal proceedings. A temporary restraining  
25 order may be issued by the court, ex parte, pending that hearing  
26 in conjunction with or subsequent to the filing of the petition upon  
27 the application of the prosecuting attorney. The temporary  
28 restraining order may be based upon the sworn declaration of a  
29 peace officer with personal knowledge of the criminal investigation  
30 that establishes probable cause to believe that aggravated white  
31 collar crime has taken place and that the amount of restitution and  
32 fines established by this section exceeds or equals the worth of the  
33 assets subject to the temporary restraining order. The declaration  
34 may include the hearsay statements of witnesses to establish the  
35 necessary facts. The temporary restraining order may be issued  
36 without notice upon a showing of good cause to the court.

37 (2) The defendant, or a person who has filed a verified claim  
38 as provided in paragraph (6) of subdivision (e), shall have the right  
39 to have the court conduct an order to show cause hearing within  
40 10 days of the service of the request for hearing upon the

1 prosecuting agency, in order to determine whether the temporary  
2 restraining order should remain in effect, whether relief should be  
3 granted from any lis pendens recorded pursuant to paragraph (4)  
4 of subdivision (e), or whether any existing order should be  
5 modified in the interests of justice. Upon a showing of good cause,  
6 the hearing shall be held within two days of the service of the  
7 request for hearing upon the prosecuting agency.

8 (3) In determining whether to issue a preliminary injunction or  
9 temporary restraining order in a proceeding brought by a  
10 prosecuting agency in conjunction with or subsequent to the filing  
11 of an allegation pursuant to this section, the court has the discretion  
12 to consider any matter that it deems reliable and appropriate,  
13 including hearsay statements, in order to reach a just and equitable  
14 decision. The court shall weigh the relative degree of certainty of  
15 the outcome on the merits and the consequences to each of the  
16 parties of granting the interim relief. If the prosecution is likely to  
17 prevail on the merits and the risk of the dissipation of assets  
18 outweighs the potential harm to the defendants and the interested  
19 parties, the court shall grant injunctive relief. The court shall give  
20 significant weight to the following factors:

21 (A) The public interest in preserving the property or assets  
22 pendente lite.

23 (B) The difficulty of preserving the property or assets pendente  
24 lite where the underlying alleged crimes involve issues of fraud  
25 and moral turpitude.

26 (C) The fact that the requested relief is being sought by a public  
27 prosecutor on behalf of alleged victims of white collar crimes.

28 (D) The likelihood that substantial public harm has occurred  
29 where aggravated white collar crime is alleged to have been  
30 committed.

31 (E) The significant public interest involved in compensating  
32 the victims of white collar crime and paying court-imposed  
33 restitution and fines.

34 (4) The court, in making its orders, may consider a defendant's  
35 request for the release of a portion of the property affected by this  
36 section in order to pay reasonable legal fees in connection with  
37 the criminal proceeding, any necessary and appropriate living  
38 expenses pending trial and sentencing, and for the purpose of  
39 posting bail. The court shall weigh the needs of the public to retain  
40 the property against the needs of the defendant to a portion of the

1 property. The court shall consider the factors listed in paragraph  
2 (3) prior to making any order releasing property for these purposes.

3 (5) The court, in making its orders, shall seek to protect the  
4 interests of any innocent third persons, including an innocent  
5 spouse, who were not involved in the commission of any criminal  
6 activity.

7 (6) Any petition filed pursuant to this section is part of the  
8 criminal proceedings for purposes of appointment of counsel and  
9 shall be assigned to the criminal division of the superior court of  
10 the county in which the accusatory pleading was filed.

11 (7) Based upon a noticed motion brought by the receiver  
12 appointed pursuant to paragraph (2) of subdivision (f), the court  
13 may order an interlocutory sale of property named in the petition  
14 when the property is liable to perish, to waste, or to be significantly  
15 reduced in value, or when the expenses of maintaining the property  
16 are disproportionate to the value thereof. The proceeds of the  
17 interlocutory sale shall be deposited with the court or as directed  
18 by the court pending determination of the proceeding pursuant to  
19 this section.

20 (8) The court may make any orders that are necessary to preserve  
21 the continuing viability of any lawful business enterprise that is  
22 affected by the issuance of a temporary restraining order or  
23 preliminary injunction issued pursuant to this action.

24 (9) In making its orders, the court shall seek to prevent any asset  
25 subject to a temporary restraining order or preliminary injunction  
26 from perishing, spoiling, going to waste, or otherwise being  
27 significantly reduced in value. Where the potential for diminution  
28 in value exists, the court shall appoint a receiver to dispose of or  
29 otherwise protect the value of the property or asset.

30 (10) A preservation order shall not be issued against any assets  
31 of a business that are not likely to be dissipated and that may be  
32 subject to levy or attachment to meet the purposes of this section.

33 (h) If the allegation that the defendant is subject to the  
34 aggravated white collar crime enhancement is dismissed or found  
35 by the trier of fact to be untrue, any preliminary injunction or  
36 temporary restraining order issued pursuant to this section shall  
37 be dissolved. If a jury is the trier of fact, and the jury is unable to  
38 reach a unanimous verdict, the court shall have the discretion to  
39 continue or dissolve all or a portion of the preliminary injunction  
40 or temporary restraining order based upon the interests of justice.

1 However, if the prosecuting agency elects not to retry the case,  
2 any preliminary injunction or temporary restraining order issued  
3 pursuant to this section shall be dissolved.

4 (i) (1) (A) If the defendant is convicted of two or more felonies,  
5 as specified in subdivision (a), and the existence of facts that would  
6 make the person subject to the aggravated white collar crime  
7 enhancement have been admitted or found to be true by the trier  
8 of fact, the trial judge shall continue the preliminary injunction or  
9 temporary restraining order until the date of the criminal sentencing  
10 and shall make a finding at that time as to what portion, if any, of  
11 the property or assets subject to the preliminary injunction or  
12 temporary restraining order shall be levied upon to pay fines and  
13 restitution to victims of the crime. The order imposing fines and  
14 restitution may exceed the total worth of the property or assets  
15 subjected to the preliminary injunction or temporary restraining  
16 order. The court may order the immediate transfer of the property  
17 or assets to satisfy any judgment and sentence made pursuant to  
18 this section. Additionally, upon motion of the prosecution, the  
19 court may enter an order as part of the judgment and sentence  
20 making the order imposing fines and restitution pursuant to this  
21 section enforceable pursuant to Title 9 (commencing with Section  
22 680.010) of Part 2 of the Code of Civil Procedure.

23 (B) Additionally, the court shall order the defendant to make  
24 full restitution to the victim or to make restitution to the victim  
25 based on his or her ability to pay, as defined in subdivision (b) of  
26 Section 1203.1b. The payment of the restitution ordered by the  
27 court pursuant to this section shall be made a condition of any  
28 probation granted by the court if the existence of facts that would  
29 make the defendant subject to the aggravated white collar crime  
30 enhancement have been admitted or found to be true by the trier  
31 of fact. Notwithstanding any other provision of law, the court may  
32 order that the period of probation continue for up to 10 years or  
33 until full restitution is made to the victim, whichever is earlier.

34 (C) The sentencing court shall retain jurisdiction to enforce the  
35 order to pay additional fines and restitution and, in appropriate  
36 cases, may initiate probation violation proceedings or contempt  
37 of court proceedings against a defendant who is found to have  
38 willfully failed to comply with any lawful order of the court.

39 (D) If the execution of judgment is stayed pending an appeal  
40 of an order of the superior court pursuant to this section, the

1 preliminary injunction or temporary restraining order shall be  
2 maintained in full force and effect during the pendency of the  
3 appellate period.

4 (2) The order imposing fines and restitution shall not affect the  
5 interest in real property of any third party that was acquired prior  
6 to the recording of the lis pendens, unless the property was obtained  
7 from the defendant other than as a bona fide purchaser for value.  
8 If any assets or property affected by this section are subject to a  
9 valid lien, mortgage, security interest, or interest under a  
10 conditional sales contract and the amount due to the holder of the  
11 lien, mortgage, interest, or contract is less than the appraised value  
12 of the property, that person may pay to the state or the local  
13 government that initiated the proceeding the amount of the  
14 difference between the appraised value of the property and the  
15 amount of the lien, mortgage, security interest, or interest under a  
16 conditional sales contract. Upon that payment, the state or local  
17 entity shall relinquish all claims to the property. If the holder of  
18 the interest elects not to make that payment to the state or local  
19 governmental entity, the interest in the property shall be deemed  
20 transferred to the state or local governmental entity and any indicia  
21 of ownership of the property shall be confirmed in the state or  
22 local governmental entity. The appraised value shall be determined  
23 as of the date judgment is entered either by agreement between  
24 the holder of the lien, mortgage, security interest, or interest under  
25 a conditional sales contract and the governmental entity involved,  
26 or if they cannot agree, then by a court-appointed appraiser for the  
27 county in which the action is brought. A person holding a valid  
28 lien, mortgage, security interest, or interest under a conditional  
29 sales contract shall be paid the appraised value of his or her interest.

30 (3) In making its final order, the court shall seek to protect the  
31 legitimately acquired interests of any innocent third persons,  
32 including an innocent spouse, who were not involved in the  
33 commission of any criminal activity.

34 (j) In all cases where property is to be levied upon pursuant to  
35 this section, a receiver appointed by the court shall be empowered  
36 to liquidate all property or assets which shall be distributed in the  
37 following order of priority:

38 (1) To the receiver, or court-appointed appraiser, for all  
39 reasonable expenditures made or incurred by him or her in  
40 connection with the sale of the property or liquidation of assets,

1 including all reasonable expenditures for any necessary repairs,  
2 storage, or transportation of any property levied upon under this  
3 section.

4 (2) To any holder of a valid lien, mortgage, or security interest  
5 up to the amount of his or her interest in the property or proceeds.

6 (3) To any victim as restitution for any fraudulent or unlawful  
7 acts alleged in the accusatory pleading that were proven by the  
8 prosecuting agency as part of the pattern of fraudulent or unlawful  
9 acts.

10 (4) For payment of any fine imposed pursuant to this section.  
11 The proceeds obtained in payment of a fine shall be paid to the  
12 treasurer of the county in which the judgment was entered, or if  
13 the action was undertaken by the Attorney General, to the  
14 Treasurer. If the payment of any fine imposed pursuant to this  
15 section involved losses resulting from violation of Section 550 of  
16 this code or Section 1871.4 of the Insurance Code, one-half of the  
17 fine collected shall be paid to the treasurer of the county in which  
18 the judgment was entered, and one-half of the fine collected shall  
19 be paid to the Department of Insurance for deposit in the  
20 appropriate account in the Insurance Fund. The proceeds from the  
21 fine first shall be used by a county to reimburse local prosecutors  
22 and enforcement agencies for the reasonable costs of investigation  
23 and prosecution of cases brought pursuant to this section.

24 (5) To the Restitution Fund, or in cases involving convictions  
25 relating to insurance fraud, to the Insurance Fund as restitution for  
26 crimes not specifically pleaded and proven in the accusatory  
27 pleading.

28 (k) If, after distribution pursuant to paragraphs (1) and (2) of  
29 subdivision (j), the value of the property to be levied upon pursuant  
30 to this section is insufficient to pay for restitution and fines, the  
31 court shall order an equitable sharing of the proceeds of the  
32 liquidation of the property, and any other recoveries, which shall  
33 specify the percentage of recoveries to be devoted to each purpose.  
34 At least 70 percent of the proceeds remaining after distribution  
35 pursuant to paragraphs (1) and (2) of subdivision (j) shall be  
36 devoted to restitution.

37 (l) Unless otherwise expressly provided, the remedies or  
38 penalties provided by this section are cumulative to each other and  
39 to the remedies or penalties available under all other laws of this  
40 state, except that two separate actions against the same defendant

and pertaining to the same fraudulent or unlawful acts may not be brought by a district attorney or the Attorney General pursuant to this section and Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code. If a fine is imposed under this section, it shall be in lieu of all other fines that may be imposed pursuant to any other provision of law for the crimes for which the defendant has been convicted in the action.

*(m) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 88. Section 191.5 of the Penal Code is amended to read:

191.5. (a) Gross vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, and with gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, and with gross negligence.

(b) Vehicular manslaughter while intoxicated is the unlawful killing of a human being without malice aforethought, in the driving of a vehicle, where the driving was in violation of Section 23140, 23152, or 23153 of the Vehicle Code, and the killing was either the proximate result of the commission of an unlawful act, not amounting to a felony, but without gross negligence, or the proximate result of the commission of a lawful act that might produce death, in an unlawful manner, but without gross negligence.

(c) (1) Except as provided in subdivision (d), gross vehicular manslaughter while intoxicated in violation of subdivision (a) is punishable by imprisonment in the state prison for 4, 6, or 10 years.

(2) Vehicular manslaughter while intoxicated in violation of subdivision (b) is punishable by imprisonment in a county jail for not more than one year or by imprisonment in the state prison for 16 months or 2 or 4 years.

(d) A person convicted of violating subdivision (a) who has one or more prior convictions of this section or of paragraph (1) of subdivision (c) of Section 192, subdivision (a) or (b) of Section

1 192.5 of this code, or of violating Section 23152 punishable under  
2 Sections 23540, 23542, 23546, 23548, 23550, or 23552 of, or  
3 convicted of Section 23153 of, the Vehicle Code, shall be punished  
4 by imprisonment in the state prison for a term of 15 years to life.  
5 Article 2.5 (commencing with Section 2930) of Chapter 7 of Title  
6 1 of Part 3 shall apply to reduce the term imposed pursuant to this  
7 subdivision.

8 *(e) Alternatively, on or after the operative date of an applicable*  
9 *rule or rules proposed by the California Public Safety Commission,*  
10 *a person who violates this section shall be punished as provided*  
11 *in the applicable sentencing rules.*

12 ~~(e)~~

13 *(f)* This section shall not be construed as prohibiting or  
14 precluding a charge of murder under Section 188 upon facts  
15 exhibiting wantonness and a conscious disregard for life to support  
16 a finding of implied malice, or upon facts showing malice  
17 consistent with the holding of the California Supreme Court in  
18 *People v. Watson*, 30 Cal. 3d 290.

19 ~~(f)~~

20 *(g)* This section shall not be construed as making any homicide  
21 in the driving of a vehicle or the operation of a vessel punishable  
22 which is not a proximate result of the commission of an unlawful  
23 act, not amounting to felony, or of the commission of a lawful act  
24 which might produce death, in an unlawful manner.

25 ~~(g)~~

26 *(h)* For the penalties in subdivision (d) to apply, the existence  
27 of any fact required under subdivision (d) shall be alleged in the  
28 information or indictment and either admitted by the defendant in  
29 open court or found to be true by the trier of fact.

30 *SEC. 89. Section 193 of the Penal Code is amended to read:*

31 193. (a) Voluntary manslaughter is punishable by  
32 imprisonment in the state prison for 3, 6, or 11 years.

33 (b) Involuntary manslaughter is punishable by imprisonment in  
34 the state prison for two, three, or four years.

35 (c) Vehicular manslaughter is punishable as follows:

36 (1) A violation of paragraph (1) of subdivision (c) of Section  
37 192 is punishable either by imprisonment in the county jail for not  
38 more than one year or by imprisonment in the state prison for two,  
39 four, or six years.



1 (2) A violation of paragraph (2) of subdivision (c) of Section  
2 192 is punishable by imprisonment in the county jail for not more  
3 than one year.

4 (3) A violation of paragraph (3) of subdivision (c) of Section  
5 192 is punishable by imprisonment in the state prison for 4, 6, or  
6 10 years.

7 *(d) Alternatively, on or after the operative date of an applicable*  
8 *rule or rules proposed by the California Public Safety Commission,*  
9 *a person who violates a provision for which the punishment is*  
10 *specified in this section shall be punished as provided in the*  
11 *applicable sentencing rules.*

12 SEC. 90. Section 193.5 of the Penal Code is amended to read:  
13 193.5. Manslaughter committed during the operation of a vessel  
14 is punishable as follows:

15 (a) A violation of subdivision (a) of Section 192.5 is punishable  
16 by imprisonment in the state prison for 4, 6, or ten years.

17 (b) A violation of subdivision (b) of Section 192.5 is punishable  
18 by imprisonment in a county jail for not more than one year or by  
19 imprisonment in the state prison for 16 months or 2 or 4 years.

20 (c) A violation of subdivision (c) of Section 192.5 is punishable  
21 either by imprisonment in the county jail for not more than one  
22 year or by imprisonment in the state prison for two, four, or six  
23 years.

24 (d) A violation of subdivision (d) of Section 192.5 is punishable  
25 by imprisonment in the county jail for not more than one year.

26 *(e) Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates a provision for which the punishment is*  
29 *specified in this section shall be punished as provided in the*  
30 *applicable sentencing rules.*

31 SEC. 91. Section 204 of the Penal Code is amended to read:

32 204. Mayhem is punishable by imprisonment in the state prison  
33 for two, four, or eight years *or, on or after the operative date of*  
34 *an applicable rule or rules proposed by the California Public*  
35 *Safety Commission, is punishable as provided in the applicable*  
36 *sentencing rules.*

37 SEC. 92. Section 205 of the Penal Code is amended to read:

38 205. (a) A person is guilty of aggravated mayhem when he or  
39 she unlawfully, under circumstances manifesting extreme  
40 indifference to the physical or psychological well-being of another

1 person, intentionally causes permanent disability or disfigurement  
2 of another human being or deprives a human being of a limb,  
3 organ, or member of his or her body. For purposes of this section,  
4 it is not necessary to prove an intent to kill. Aggravated mayhem  
5 is a felony punishable by imprisonment in the state prison for life  
6 with the possibility of parole.

7 *(b) Alternatively, on or after the operative date of an applicable*  
8 *rule or rules proposed by the California Public Safety Commission,*  
9 *a person who violates this section shall be punished as provided*  
10 *in the applicable sentencing rules.*

11 *SEC. 93. Section 208 of the Penal Code is amended to read:*

12 208. (a) Kidnapping is punishable by imprisonment in the  
13 state prison for three, five, or eight years.

14 (b) If the person kidnapped is under 14 years of age at the time  
15 of the commission of the crime, the kidnapping is punishable by  
16 imprisonment in the state prison for 5, 8, or 11 years. This  
17 subdivision is not applicable to the taking, detaining, or concealing,  
18 of a minor child by a biological parent, a natural father, as specified  
19 in Section 7611 of the Family Code, an adoptive parent, or a person  
20 who has been granted access to the minor child by a court order.

21 (c) In all cases in which probation is granted, the court shall,  
22 except in unusual cases where the interests of justice would best  
23 be served by a lesser penalty, require as a condition of the probation  
24 that the person be confined in the county jail for 12 months. If the  
25 court grants probation without requiring the defendant to be  
26 confined in the county jail for 12 months, it shall specify its reason  
27 or reasons for imposing a lesser penalty.

28 *(d) Alternatively, on or after the operative date of an applicable*  
29 *rule or rules proposed by the California Public Safety Commission,*  
30 *a person who violates this section shall be punished as provided*  
31 *in the applicable sentencing rules.*

32 *SEC. 94. Section 209 of the Penal Code is amended to read:*

33 209. (a) Any person who seizes, confines, inveigles, entices,  
34 decoys, abducts, conceals, kidnaps or carries away another person  
35 by any means whatsoever with intent to hold or detain, or who  
36 holds or detains, that person for ransom, reward or to commit  
37 extortion or to exact from another person any money or valuable  
38 thing, or any person who aids or abets any such act, is guilty of a  
39 felony, and upon conviction thereof, shall be punished by  
40 imprisonment in the state prison for life without possibility of

1 parole in cases in which any person subjected to any such act  
2 suffers death or bodily harm, or is intentionally confined in a  
3 manner which exposes that person to a substantial likelihood of  
4 death, or shall be punished by imprisonment in the state prison for  
5 life with the possibility of parole in cases where no such person  
6 suffers death or bodily harm.

7 (b) (1) Any person who kidnaps or carries away any individual  
8 to commit robbery, rape, spousal rape, oral copulation, sodomy,  
9 or any violation of Section 264.1, 288, or 289, shall be punished  
10 by imprisonment in the state prison for life with the possibility of  
11 parole.

12 (2) This subdivision shall only apply if the movement of the  
13 victim is beyond that merely incidental to the commission of, and  
14 increases the risk of harm to the victim over and above that  
15 necessarily present in, the intended underlying offense.

16 (c) In all cases in which probation is granted, the court shall,  
17 except in unusual cases where the interests of justice would best  
18 be served by a lesser penalty, require as a condition of the probation  
19 that the person be confined in the county jail for 12 months. If the  
20 court grants probation without requiring the defendant to be  
21 confined in the county jail for 12 months, it shall specify its reason  
22 or reasons for imposing a lesser penalty.

23 (d) Subdivision (b) shall not be construed to supersede or affect  
24 Section 667.61. A person may be charged with a violation of  
25 subdivision (b) and Section 667.61. However, a person may not  
26 be punished under subdivision (b) and Section 667.61 for the same  
27 act that constitutes a violation of both subdivision (b) and Section  
28 667.61.

29 (e) *Alternatively, on or after the operative date of an applicable*  
30 *rule or rules proposed by the California Public Safety Commission,*  
31 *a person who violates this section shall be punished as provided*  
32 *in the applicable sentencing rules, except that no sentencing rule*  
33 *shall change any provision of this section that was specifically*  
34 *added by voter initiative.*

35 SEC. 95. Section 209.5 of the Penal Code is amended to read:

36 209.5. (a) Any person who, during the commission of a  
37 carjacking and in order to facilitate the commission of the  
38 carjacking, kidnaps another person who is not a principal in the  
39 commission of the carjacking shall be punished by imprisonment  
40 in the state prison for life with the possibility of parole.

(b) This section shall only apply if the movement of the victim is beyond that merely incidental to the commission of the carjacking, the victim is moved a substantial distance from the vicinity of the carjacking, and the movement of the victim increases the risk of harm to the victim over and above that necessarily present in the crime of carjacking itself.

(c) In all cases in which probation is granted, the court shall, except in unusual cases where the interests of justice would best be served by a lesser penalty, require as a condition of the probation that the person be confined in the county jail for 12 months. If the court grants probation without requiring the defendant to be confined in the county jail for 12 months, it shall specify its reason or reasons for imposing a lesser penalty.

(d) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 96. Section 210 of the Penal Code is amended to read:

210. (a) Every person who for the purpose of obtaining any ransom or reward, or to extort or exact from any person any money or thing of value, poses as, or in any manner represents himself to be a person who has seized, confined, inveigled, enticed, decoyed, abducted, concealed, kidnapped or carried away any person, or who poses as, or in any manner represents himself to be a person who holds or detains ~~such~~ that person, or who poses as, or in any manner represents himself to be a person who has aided or abetted ~~any such~~ that act, or who poses as or in any manner represents himself to be a person who has the influence, power, or ability, to obtain the release of ~~such~~ that person so seized, confined, inveigled, enticed, decoyed, abducted, concealed, kidnapped or carried away, is guilty of a felony and upon conviction thereof shall be punished by imprisonment *in the state prison* for two, three, or four years.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~Nothing~~

(c) *Nothing* in this section prohibits any person who, in good faith believes that he can rescue any person who has been seized, confined, inveigled, enticed, decoyed, abducted, concealed,

1 kidnapped or carried away, and who has had no part in, or  
2 connection with, such confinement, inveigling, decoying,  
3 abducting, concealing, kidnapping, or carrying away, from offering  
4 to rescue or obtain the release of ~~such~~ *that* person for a monetary  
5 consideration or other thing of value.

6 *SEC. 97. Section 210.5 of the Penal Code is amended to read:*

7 210.5. (a) Every person who commits the offense of false  
8 imprisonment, as defined in Section 236, against a person for  
9 purposes of protection from arrest, which substantially increases  
10 the risk of harm to the victim, or for purposes of using the person  
11 as a shield is punishable by imprisonment in the state prison for  
12 three, five, or eight years.

13 (b) *Alternatively, on or after the operative date of an applicable*  
14 *rule or rules proposed by the California Public Safety Commission,*  
15 *a person who violates this section shall be punished as provided*  
16 *in the applicable sentencing rules.*

17 *SEC. 98. Section 213 of the Penal Code is amended to read:*

18 213. (a) Robbery is punishable as follows:

19 (1) Robbery of the first degree is punishable as follows:

20 (A) If the defendant, voluntarily acting in concert with two or  
21 more other persons, commits the robbery within an inhabited  
22 dwelling house, a vessel as defined in Section 21 of the Harbors  
23 and Navigation Code, which is inhabited and designed for  
24 habitation, an inhabited floating home as defined in subdivision  
25 (d) of Section 18075.55 of the Health and Safety Code, a trailer  
26 coach as defined in the Vehicle Code, which is inhabited, or the  
27 inhabited portion of any other building, by imprisonment in the  
28 state prison for three, six, or nine years.

29 (B) In all cases other than that specified in subparagraph (A),  
30 by imprisonment in the state prison for three, four, or six years.

31 (2) Robbery of the second degree is punishable by imprisonment  
32 in the state prison for two, three, or five years.

33 (b) Notwithstanding Section 664, attempted robbery in violation  
34 of paragraph (2) of subdivision (a) is punishable by imprisonment  
35 in the state prison.

36 (c) *Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates a provision for which the punishment is*  
39 *specified in this section shall be punished as provided in the*  
40 *applicable sentencing rules.*

1     *SEC. 99. Section 214 of the Penal Code is amended to read:*

2     214. (a) Every person who goes upon or boards any railroad  
3     train, car or engine, with the intention of robbing any passenger  
4     or other person on ~~such~~ *that* train, car or engine, of any personal  
5     property thereon in the possession or care or under the control of  
6     any ~~such~~ *that* passenger or other person, or who interferes in any  
7     manner with any switch, rail, sleeper, viaduct, culvert,  
8     embankment, structure or appliance pertaining to or connected  
9     with any railroad, or places any dynamite or other explosive  
10    substance or material upon or near the track of any railroad, or  
11    who sets fire to any railroad bridge or trestle, or who shows, masks,  
12    extinguishes or alters any light or other signal, or exhibits or  
13    compels any other person to exhibit any false light or signal, or  
14    who stops ~~any such~~ *a* train, car or engine, or slackens the speed  
15    thereof, or who compels or attempts to compel any person in charge  
16    or control thereof to stop ~~any such~~ *a* train, car or engine, or slacken  
17    the speed thereof, with the intention of robbing any passenger or  
18    other person on ~~such~~ *that* train, car or engine, of any personal  
19    property thereon in the possession or charge or under the control  
20    of ~~any such~~ *that* passenger or other person, is guilty of a felony.

21    (b) *Alternatively, on or after the operative date of an applicable*  
22    *rule or rules proposed by the California Public Safety Commission,*  
23    *a person who violates this section shall be punished as provided*  
24    *in the applicable sentencing rules.*

25    *SEC. 100. Section 215 of the Penal Code is amended to read:*

26    215. (a) “Carjacking” is the felonious taking of a motor vehicle  
27    in the possession of another, from his or her person or immediate  
28    presence, or from the person or immediate presence of a passenger  
29    of the motor vehicle, against his or her will and with the intent to  
30    either permanently or temporarily deprive the person in possession  
31    of the motor vehicle of his or her possession, accomplished by  
32    means of force or fear.

33    (b) Carjacking is punishable by imprisonment in the state prison  
34    for a term of three, five, or nine years.

35    (c) This section shall not be construed to supersede or affect  
36    Section 211. A person may be charged with a violation of this  
37    section and Section 211. However, no defendant may be punished  
38    under this section and Section 211 for the same act which  
39    constitutes a violation of both this section and Section 211.

1     *(d) Alternatively, on or after the operative date of an applicable*  
2     *rule or rules proposed by the California Public Safety Commission,*  
3     *a person who violates this section shall be punished as provided*  
4     *in the applicable sentencing rules.*

5     SEC. 101. Section 220 of the Penal Code is amended to read:

6     220. (a) Except as provided in subdivision (b), any person  
7     who assaults another with intent to commit mayhem, rape, sodomy,  
8     oral copulation, or any violation of Section 264.1, 288, or 289 shall  
9     be punished by imprisonment in the state prison for two, four, or  
10    six years.

11    (b) Any person who, in the commission of a burglary of the first  
12    degree, as defined in subdivision (a) of Section 460, assaults  
13    another with intent to commit rape, sodomy, oral copulation, or  
14    any violation of Section 264.1, 288, or 289 shall be punished by  
15    imprisonment in the state prison for life with the possibility of  
16    parole.

17    *(c) Alternatively, on or after the operative date of an applicable*  
18    *rule or rules proposed by the California Public Safety Commission,*  
19    *a person who violates this section shall be punished as provided*  
20    *in the applicable sentencing rules, except that no sentencing rule*  
21    *shall change any provision of this section that was specifically*  
22    *added by voter initiative.*

23    SEC. 102. Section 222 of the Penal Code is amended to read:

24    222. (a) Every person guilty of administering to another any  
25    chloroform, ether, laudanum, or any controlled substance,  
26    anaesthetic, or intoxicating agent, with intent thereby to enable or  
27    assist himself or herself or any other person to commit a felony,  
28    is guilty of a felony.

29    *(b) Alternatively, on or after the operative date of an applicable*  
30    *rule or rules proposed by the California Public Safety Commission,*  
31    *a person who violates this section shall be punished as provided*  
32    *in the applicable sentencing rules.*

33    SEC. 103. Section 236.1 of the Penal Code is amended to read:

34    236.1. (a) Any person who deprives or violates the personal  
35    liberty of another with the intent to effect or maintain a felony  
36    violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to  
37    obtain forced labor or services, is guilty of human trafficking.

38    (b) Except as provided in subdivision (c), a violation of this  
39    section is punishable by imprisonment in the state prison for three,  
40    four, or five years.

(c) A violation of this section where the victim of the trafficking was under 18 years of age at the time of the commission of the offense is punishable by imprisonment in the state prison for four, six, or eight years.

*(d) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~

(e) (1) For purposes of this section, unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(2) Duress includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim.

~~(e)~~

(f) For purposes of this section, "forced labor or services" means labor or services that are performed or provided by a person and are obtained or maintained through force, fraud, or coercion, or equivalent conduct that would reasonably overbear the will of the person.

~~(f)~~

(g) The Legislature finds that the definition of human trafficking in this section is equivalent to the federal definition of a severe form of trafficking found in Section 7102(8) of Title 22 of the United States Code.

*SEC. 104. Section 237 of the Penal Code is amended to read:*

237. (a) False imprisonment is punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the false imprisonment ~~be~~ is effected by violence, menace, fraud, or deceit, it shall be punishable by imprisonment in the state prison.



1 (b) False imprisonment of an elder or dependent adult by use  
2 of violence, menace, fraud, or deceit shall be punishable as  
3 described in subdivision (f) of Section 368.

4 (c) *Alternatively, on or after the operative date of an applicable*  
5 *rule or rules proposed by the California Public Safety Commission,*  
6 *a person who violates this section shall be punished as provided*  
7 *in the applicable sentencing rules.*

8 SEC. 105. Section 241 of the Penal Code is amended to read:

9 241. (a) An assault is punishable by a fine not exceeding one  
10 thousand dollars (\$1,000), or by imprisonment in the county jail  
11 not exceeding six months, or by both the fine and imprisonment.

12 (b) When an assault is committed against the person of a peace  
13 officer, firefighter, emergency medical technician, mobile intensive  
14 care paramedic, lifeguard, process server, traffic officer, code  
15 enforcement officer, or animal control officer engaged in the  
16 performance of his or her duties, or a physician or nurse engaged  
17 in rendering emergency medical care outside a hospital, clinic, or  
18 other health care facility, and the person committing the offense  
19 knows or reasonably should know that the victim is a peace officer,  
20 firefighter, emergency medical technician, mobile intensive care  
21 paramedic, lifeguard, process server, traffic officer, code  
22 enforcement officer, or animal control officer engaged in the  
23 performance of his or her duties, or a physician or nurse engaged  
24 in rendering emergency medical care, the assault is punishable by  
25 a fine not exceeding two thousand dollars (\$2,000), or by  
26 imprisonment in the county jail not exceeding one year, or by both  
27 the fine and imprisonment.

28 (c) *Alternatively, on or after the operative date of an applicable*  
29 *rule or rules proposed by the California Public Safety Commission,*  
30 *a person who violates this section shall be punished as provided*  
31 *in the applicable sentencing rules.*

32 (e)

33 (d) As used in this section, the following definitions apply:

34 (1) Peace officer means any person defined in Chapter 4.5  
35 (commencing with Section 830) of Title 3 of Part 2.

36 (2) "Emergency medical technician" means a person possessing  
37 a valid course completion certificate from a program approved by  
38 the State Department of Health Services for the medical training  
39 and education of ambulance personnel, and who meets the

1 standards of Division 2.5 (commencing with Section 1797) of the  
2 Health and Safety Code.

3 (3) “Mobile intensive care paramedic” refers to those persons  
4 who meet the standards set forth in Division 2.5 (commencing  
5 with Section 1797) of the Health and Safety Code.

6 (4) “Nurse” means a person who meets the standards of Division  
7 2.5 (commencing with Section 1797) of the Health and Safety  
8 Code.

9 (5) “Lifeguard” means a person who is:

10 (A) Employed as a lifeguard by the state, a county, or a city,  
11 and is designated by local ordinance as a public officer who has a  
12 duty and responsibility to enforce local ordinances and  
13 misdemeanors through the issuance of citations.

14 (B) Wearing distinctive clothing which includes written  
15 identification of the person’s status as a lifeguard and which clearly  
16 identifies the employing organization.

17 (6) “Process server” means any person who meets the standards  
18 or is expressly exempt from the standards set forth in Section 22350  
19 of the Business and Professions Code.

20 (7) “Traffic officer” means any person employed by a county  
21 or city to monitor and enforce state laws and local ordinances  
22 relating to parking and the operation of vehicles.

23 (8) “Animal control officer” means any person employed by a  
24 county or city for purposes of enforcing animal control laws or  
25 regulations.

26 (9) (A) “Code enforcement officer” means any person who is  
27 not described in Chapter 4.5 (commencing with Section 830) of  
28 Title 3 of Part 2 and who is employed by any governmental  
29 subdivision, public or quasi-public corporation, public agency,  
30 public service corporation, any town, city, county, or municipal  
31 corporation, whether incorporated or chartered, that has  
32 enforcement authority for health, safety, and welfare requirements,  
33 and whose duties include enforcement of any statute, rules,  
34 regulations, or standards, and who is authorized to issue citations,  
35 or file formal complaints.

36 (B) “Code enforcement officer” also includes any person who  
37 is employed by the Department of Housing and Community  
38 Development who has enforcement authority for health, safety,  
39 and welfare requirements pursuant to the Employee Housing Act  
40 (Part 1 (commencing with Section 17000) of Division 13 of the

1 Health and Safety Code); the State Housing Law (Part 1.5  
2 (commencing with Section 17910) of Division 13 of the Health  
3 and Safety Code); the Mobilehomes-Manufactured Housing Act  
4 (Part 2 (commencing with Section 18000) of Division 13 of the  
5 Health and Safety Code); the Mobilehome Parks Act (Part 2.1  
6 (commencing with Section 18200) of Division 13 of the Health  
7 and Safety Code); and the Special Occupancy Parks Act (Part 2.3  
8 (commencing with Section 18860) of Division 13 of the Health  
9 and Safety Code).

10 *SEC. 106. Section 241.1 of the Penal Code is amended to read:*

11 241.1. (a) When an assault is committed against the person  
12 of a custodial officer as defined in Section 831 or 831.5, and the  
13 person committing the offense knows or reasonably should know  
14 that ~~such~~ the victim is ~~such~~ a custodial officer engaged in the  
15 performance of his duties, the offense shall be punished by  
16 imprisonment in the county jail not exceeding one year or by  
17 imprisonment in the state prison.

18 (b) *Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 *SEC. 107. Section 241.2 of the Penal Code is amended to read:*

23 241.2. (a) (1) When an assault is committed on school or park  
24 property against any person, the assault is punishable by a fine not  
25 exceeding two thousand dollars (\$2,000), or by imprisonment in  
26 the county jail not exceeding one year, or by both that fine and  
27 imprisonment.

28 (2) When a violation of this section is committed by a minor  
29 on school property, the court may, in addition to any other fine,  
30 sentence, or as a condition of probation, order the minor to attend  
31 counseling as deemed appropriate by the court at the expense of  
32 the minor's parents. The court shall take into consideration the  
33 ability of the minor's parents to pay, however, no minor shall be  
34 relieved of attending counseling because of the minor's parents'  
35 inability to pay for the counseling imposed by this section.

36 (b) *Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates this section shall be punished as provided*  
39 *in the applicable sentencing rules.*

40 (b)

(c) “School,” as used in this section, means any elementary school, junior high school, four-year high school, senior high school, adult school or any branch thereof, opportunity school, continuation high school, regional occupational center, evening high school, technical school, or community college.

~~(e)~~

(d) “Park,” as used in this section, means any publicly maintained or operated park. It does not include any facility when used for professional sports or commercial events.

*SEC. 108. Section 241.3 of the Penal Code is amended to read:*

241.3. (a) When an assault is committed against any person on the property of, or on a motor vehicle of, a public transportation provider, the offense shall be punished by a fine not to exceed two thousand dollars (\$2,000), or by imprisonment in a county jail not to exceed one year, or by both the fine and imprisonment.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(b)~~

(c) As used in this section, “public transportation provider” means a publicly or privately owned entity that operates, for the transportation of persons for hire, a bus, taxicab, streetcar, cable car, trackless trolley, or other motor vehicle, including a vehicle operated on stationary rails or on a track or rail suspended in air, or that operates a schoolbus.

~~(e)~~

(d) As used in this section, “on the property of” means the entire station where public transportation is available, including the parking lot reserved for the public who utilize the transportation system.

*SEC. 109. Section 241.4 of the Penal Code is amended to read:*

241.4. (a) An assault is punishable by fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both. When the assault is committed against the person of a peace officer engaged in the performance of his or her duties as a member of a police department of a school district pursuant to Section 38000 of the Education Code, and the person committing the offense knows or reasonably should know that the victim is a peace officer engaged

1 in the performance of his or her duties, the offense shall be  
2 punished by imprisonment in the county jail not exceeding one  
3 year or by imprisonment in the state prison.

4 *(b) Alternatively, on or after the operative date of an applicable*  
5 *rule or rules proposed by the California Public Safety Commission,*  
6 *a person who violates this section shall be punished as provided*  
7 *in the applicable sentencing rules.*

8 *SEC. 110. Section 241.6 of the Penal Code is amended to read:*

9 241.6. (a) When an assault is committed against a school  
10 employee engaged in the performance of his or her duties, or in  
11 retaliation for an act performed in the course of his or her duties,  
12 whether on or off campus, during the schoolday or at any other  
13 time, and the person committing the offense knows or reasonably  
14 should know the victim is a school employee, the assault is  
15 punishable by imprisonment in a county jail not exceeding one  
16 year, or by a fine not exceeding two thousand dollars (\$2,000), or  
17 by both the fine and imprisonment.

18 *(b) Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 ~~For~~

23 (c) For purposes of this section, “school employee” has the  
24 same meaning as defined in subdivision (d) of Section 245.5.

25 ~~This~~

26 (d) This section shall not apply to conduct arising during the  
27 course of an otherwise lawful labor dispute.

28 *SEC. 111. Section 241.7 of the Penal Code is amended to read:*

29 241.7. (a) Any person who is a party to a civil or criminal  
30 action in which a jury has been selected to try the case and who,  
31 while the legal action is pending or after the conclusion of the trial,  
32 commits an assault against any juror or alternate juror who was  
33 selected and sworn in that legal action, shall be punished by a fine  
34 not to exceed two thousand dollars (\$2,000), or by imprisonment  
35 in the county jail not exceeding one year, or by both ~~such~~ *that* fine  
36 and imprisonment, or by imprisonment in the state prison.

37 *(b) Alternatively, on or after the operative date of an applicable*  
38 *rule or rules proposed by the California Public Safety Commission,*  
39 *a person who violates this section shall be punished as provided*  
40 *in the applicable sentencing rules.*

1     *SEC. 112. Section 241.8 of the Penal Code is amended to read:*

2     241.8. (a) Any person who commits an assault against a  
3     member of the United States Armed Forces because of the victim's  
4     service in the United States Armed Forces shall be punished by a  
5     fine not exceeding two thousand dollars (\$2,000), by imprisonment  
6     in a county jail for a period not exceeding one year, or by both that  
7     fine and imprisonment.

8     ~~(b) "Because imprisonment. "Because of"~~ means that the bias  
9     motivation must be a cause in fact of the assault, whether or not  
10    other causes exist. When multiple concurrent motives exist, the  
11    prohibited bias must be a substantial factor in bringing about the  
12    assault.

13    **(b) Alternatively, on or after the operative date of an applicable**  
14    *rule or rules proposed by the California Public Safety Commission,*  
15    *a person who violates this section shall be punished as provided*  
16    *in the applicable sentencing rules.*

17    *SEC. 113. Section 243 of the Penal Code is amended to read:*

18    243. (a) A battery is punishable by a fine not exceeding two  
19    thousand dollars (\$2,000), or by imprisonment in a county jail not  
20    exceeding six months, or by both that fine and imprisonment.

21    (b) When a battery is committed against the person of a peace  
22    officer, custodial officer, firefighter, emergency medical technician,  
23    lifeguard, process server, traffic officer, code enforcement officer,  
24    or animal control officer engaged in the performance of his or her  
25    duties, whether on or off duty, including when the peace officer  
26    is in a police uniform and is concurrently performing the duties  
27    required of him or her as a peace officer while also employed in  
28    a private capacity as a part-time or casual private security guard  
29    or patrolman, or a nonsworn employee of a probation department  
30    engaged in the performance of his or her duties, whether on or off  
31    duty, or a physician or nurse engaged in rendering emergency  
32    medical care outside a hospital, clinic, or other health care facility,  
33    and the person committing the offense knows or reasonably should  
34    know that the victim is a peace officer, custodial officer, firefighter,  
35    emergency medical technician, lifeguard, process server, traffic  
36    officer, code enforcement officer, or animal control officer engaged  
37    in the performance of his or her duties, nonsworn employee of a  
38    probation department, or a physician or nurse engaged in rendering  
39    emergency medical care, the battery is punishable by a fine not  
40    exceeding two thousand dollars (\$2,000), or by imprisonment in

1 a county jail not exceeding one year, or by both that fine and  
2 imprisonment.

3 (c) (1) When a battery is committed against a custodial officer,  
4 firefighter, emergency medical technician, lifeguard, process server,  
5 traffic officer, or animal control officer engaged in the performance  
6 of his or her duties, whether on or off duty, or a nonsworn  
7 employee of a probation department engaged in the performance  
8 of his or her duties, whether on or off duty, or a physician or nurse  
9 engaged in rendering emergency medical care outside a hospital,  
10 clinic, or other health care facility, and the person committing the  
11 offense knows or reasonably should know that the victim is a  
12 nonsworn employee of a probation department, custodial officer,  
13 firefighter, emergency medical technician, lifeguard, process server,  
14 traffic officer, or animal control officer engaged in the performance  
15 of his or her duties, or a physician or nurse engaged in rendering  
16 emergency medical care, and an injury is inflicted on that victim,  
17 the battery is punishable by a fine of not more than two thousand  
18 dollars (\$2,000), by imprisonment in a county jail not exceeding  
19 one year, or by both that fine and imprisonment, or by  
20 imprisonment in the state prison for 16 months, or two or three  
21 years.

22 (2) When the battery specified in paragraph (1) is committed  
23 against a peace officer engaged in the performance of his or her  
24 duties, whether on or off duty, including when the peace officer  
25 is in a police uniform and is concurrently performing the duties  
26 required of him or her as a peace officer while also employed in  
27 a private capacity as a part-time or casual private security guard  
28 or patrolman and the person committing the offense knows or  
29 reasonably should know that the victim is a peace officer engaged  
30 in the performance of his or her duties, the battery is punishable  
31 by a fine of not more than ten thousand dollars (\$10,000), or by  
32 imprisonment in a county jail not exceeding one year or in the  
33 state prison for 16 months, or two or three years, or by both that  
34 fine and imprisonment.

35 (d) When a battery is committed against any person and serious  
36 bodily injury is inflicted on the person, the battery is punishable  
37 by imprisonment in a county jail not exceeding one year or  
38 imprisonment in the state prison for two, three, or four years.

39 (e) (1) When a battery is committed against a spouse, a person  
40 with whom the defendant is cohabiting, a person who is the parent

1 of the defendant's child, former spouse, ~~fiancé~~ *fiance*, or ~~fiancée~~  
2 *fiancee*, or a person with whom the defendant currently has, or has  
3 previously had, a dating or engagement relationship, the battery  
4 is punishable by a fine not exceeding two thousand dollars  
5 (\$2,000), or by imprisonment in a county jail for a period of not  
6 more than one year, or by both that fine and imprisonment. If  
7 probation is granted, or the execution or imposition of the sentence  
8 is suspended, it shall be a condition thereof that the defendant  
9 participate in, for no less than one year, and successfully complete,  
10 a batterer's treatment program, as defined in Section 1203.097, or  
11 if none is available, another appropriate counseling program  
12 designated by the court. However, this provision shall not be  
13 construed as requiring a city, a county, or a city and county to  
14 provide a new program or higher level of service as contemplated  
15 by Section 6 of Article XIII B of the California Constitution.

16 (2) Upon conviction of a violation of this subdivision, if  
17 probation is granted, the conditions of probation may include, in  
18 lieu of a fine, one or both of the following requirements:

19 (A) That the defendant make payments to a battered women's  
20 shelter, up to a maximum of five thousand dollars (\$5,000).

21 (B) That the defendant reimburse the victim for reasonable costs  
22 of counseling and other reasonable expenses that the court finds  
23 are the direct result of the defendant's offense.

24 For any order to pay a fine, make payments to a battered  
25 women's shelter, or pay restitution as a condition of probation  
26 under this subdivision, the court shall make a determination of the  
27 defendant's ability to pay. In no event shall any order to make  
28 payments to a battered women's shelter be made if it would impair  
29 the ability of the defendant to pay direct restitution to the victim  
30 or court-ordered child support. Where the injury to a married person  
31 is caused in whole or in part by the criminal acts of his or her  
32 spouse in violation of this section, the community property may  
33 not be used to discharge the liability of the offending spouse for  
34 restitution to the injured spouse, required by Section 1203.04, as  
35 operative on or before August 2, 1995, or Section 1202.4, or to a  
36 shelter for costs with regard to the injured spouse and dependents,  
37 required by this section, until all separate property of the offending  
38 spouse is exhausted.

39 (3) Upon conviction of a violation of this subdivision, if  
40 probation is granted or the execution or imposition of the sentence



1 is suspended and the person has been previously convicted of a  
2 violation of this subdivision and sentenced under paragraph (1),  
3 the person shall be imprisoned for not less than 48 hours in addition  
4 to the conditions in paragraph (1). However, the court, upon a  
5 showing of good cause, may elect not to impose the mandatory  
6 minimum imprisonment as required by this subdivision and may,  
7 under these circumstances, grant probation or order the suspension  
8 of the execution or imposition of the sentence.

9 (4) The Legislature finds and declares that these specified crimes  
10 merit special consideration when imposing a sentence so as to  
11 display society's condemnation for these crimes of violence upon  
12 victims with whom a close relationship has been formed.

13 *(f) Alternatively, on or after the operative date of an applicable*  
14 *rule or rules proposed by the California Public Safety Commission,*  
15 *a person who violates this section shall be punished as provided*  
16 *in the applicable sentencing rules.*

17 ~~(f)~~

18 (g) As used in this section:

19 (1) "Peace officer" means any person defined in Chapter 4.5  
20 (commencing with Section 830) of Title 3 of Part 2.

21 (2) "Emergency medical technician" means a person who is  
22 either an EMT-I, EMT-II, or EMT-P (paramedic), and possesses  
23 a valid certificate or license in accordance with the standards of  
24 Division 2.5 (commencing with Section 1797) of the Health and  
25 Safety Code.

26 (3) "Nurse" means a person who meets the standards of Division  
27 2.5 (commencing with Section 1797) of the Health and Safety  
28 Code.

29 (4) "Serious bodily injury" means a serious impairment of  
30 physical condition, including, but not limited to, the following:  
31 loss of consciousness; concussion; bone fracture; protracted loss  
32 or impairment of function of any bodily member or organ; a wound  
33 requiring extensive suturing; and serious disfigurement.

34 (5) "Injury" means any physical injury which requires  
35 professional medical treatment.

36 (6) "Custodial officer" means any person who has the  
37 responsibilities and duties described in Section 831 and who is  
38 employed by a law enforcement agency of any city or county or  
39 who performs those duties as a volunteer.

(7) “Lifeguard” means a person defined in paragraph (5) of subdivision (c) of Section 241.

(8) “Traffic officer” means any person employed by a city, county, or city and county to monitor and enforce state laws and local ordinances relating to parking and the operation of vehicles.

(9) “Animal control officer” means any person employed by a city, county, or city and county for purposes of enforcing animal control laws or regulations.

(10) “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affectional or sexual involvement independent of financial considerations.

(11) (A) “Code enforcement officer” means any person who is not described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 and who is employed by any governmental subdivision, public or quasi-public corporation, public agency, public service corporation, any town, city, county, or municipal corporation, whether incorporated or chartered, who has enforcement authority for health, safety, and welfare requirements, and whose duties include enforcement of any statute, rules, regulations, or standards, and who is authorized to issue citations, or file formal complaints.

(B) “Code enforcement officer” also includes any person who is employed by the Department of Housing and Community Development who has enforcement authority for health, safety, and welfare requirements pursuant to the Employee Housing Act (Part 1 (commencing with Section 17000) of Division 13 of the Health and Safety Code); the State Housing Law (Part 1.5 (commencing with Section 17910) of Division 13 of the Health and Safety Code); the Mobilehomes-Manufactured Housing Act (Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety Code); the Mobilehome Parks Act (Part 2.1 (commencing with Section 18200) of Division 13 of the Health and Safety Code); and the Special Occupancy Parks Act (Part 2.3 (commencing with Section 18860) of Division 13 of the Health and Safety Code).

~~(g)~~

(h) It is the intent of the Legislature by amendments to this section at the 1981–82 and 1983–84 Regular Sessions to abrogate the holdings in cases such as *People v. Corey*, 21 Cal. 3d 738, and *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579, and to reinstate prior

judicial interpretations of this section as they relate to criminal sanctions for battery on peace officers who are employed, on a part-time or casual basis, while wearing a police uniform as private security guards or patrolmen and to allow the exercise of peace officer powers concurrently with that employment.

*SEC. 114. Section 243.10 of the Penal Code is amended to read:*

243.10. (a) Any person who commits a battery against a member of the United States Armed Forces because of the victim's service in the United States Armed Forces shall be punished by a fine not exceeding two thousand dollars (\$2,000), by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

~~(b) "Because imprisonment. "Because of"~~ means that the bias motivation must be a cause in fact of the battery, whether or not other causes exist. When multiple concurrent motives exist, the prohibited bias must be a substantial factor in bringing about the battery.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

*SEC. 115. Section 243.2 of the Penal Code is amended to read:*

243.2. (a) (1) Except as otherwise provided in Section 243.6, when a battery is committed on school property, park property, or the grounds of a public or private hospital, against any person, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in the county jail not exceeding one year, or by both the fine and imprisonment.

(2) When a violation of this section is committed by a minor on school property, the court may, in addition to any other fine, sentence, or as a condition of probation, order the minor to attend counseling as deemed appropriate by the court at the expense of the minor's parents. The court shall take into consideration the ability of the minor's parents to pay, however, no minor shall be relieved of attending counseling because of the minor's parents' inability to pay for the counseling imposed by this section.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 ~~(b)~~

4 (c) For the purposes of this section, the following terms have  
5 the following meanings:

6 (1) “Hospital” means a facility for the diagnosis, care, and  
7 treatment of human illness that is subject to, or specifically  
8 exempted from, the licensure requirements of Chapter 2  
9 (commencing with Section 1250) of Division 2 of the Health and  
10 Safety Code.

11 (2) “Park” means any publicly maintained or operated park. It  
12 does not include any facility when used for professional sports or  
13 commercial events.

14 (3) “School” means any elementary school, junior high school,  
15 four-year high school, senior high school, adult school or any  
16 branch thereof, opportunity school, continuation high school,  
17 regional occupational center, evening high school, technical school,  
18 or community college.

19 ~~(e)~~

20 (d) This section shall not apply to conduct arising during the  
21 course of an otherwise lawful labor dispute.

22 *SEC. 116. Section 243.25 of the Penal Code is amended to*  
23 *read:*

24 243.25. (a) When a battery is committed against the person  
25 of an elder or a dependent adult as defined in Section 368, with  
26 knowledge that he or she is an elder or a dependent adult, the  
27 offense shall be punishable by a fine not to exceed two thousand  
28 dollars (\$2,000), or by imprisonment in a county jail not to exceed  
29 one year, or by both that fine and imprisonment.

30 (b) *Alternatively, on or after the operative date of an applicable*  
31 *rule or rules proposed by the California Public Safety Commission,*  
32 *a person who violates this section shall be punished as provided*  
33 *in the applicable sentencing rules.*

34 *SEC. 117. Section 243.3 of the Penal Code is amended to read:*

35 243.3. (a) When a battery is committed against the person of  
36 an operator, driver, or passenger on a bus, taxicab, streetcar, cable  
37 car, trackless trolley, or other motor vehicle, including a vehicle  
38 operated on stationary rails or on a track or rail suspended in the  
39 air, used for the transportation of persons for hire, or against a  
40 schoolbus driver, or against the person of a station agent or ticket

1 agent for the entity providing the transportation, and the person  
2 who commits the offense knows or reasonably should know that  
3 the victim, in the case of an operator, driver, or agent, is engaged  
4 in the performance of his or her duties, or is a passenger the offense  
5 shall be punished by a fine not exceeding ten thousand dollars  
6 (\$10,000), or by imprisonment in a county jail not exceeding one  
7 year, or by both that fine and imprisonment. If an injury is inflicted  
8 on that victim, the offense shall be punished by a fine not exceeding  
9 ten thousand dollars (\$10,000), or by imprisonment in a county  
10 jail not exceeding one year or in the state prison for 16 months, or  
11 two or three years, or by both that fine and imprisonment.

12 *(b) Alternatively, on or after the operative date of an applicable*  
13 *rule or rules proposed by the California Public Safety Commission,*  
14 *a person who violates this section shall be punished as provided*  
15 *in the applicable sentencing rules.*

16 *SEC. 118. Section 243.35 of the Penal Code is amended to*  
17 *read:*

18 243.35. (a) Except as provided in Section 243.3, when a battery  
19 is committed against any person on the property of, or in a motor  
20 vehicle of, a public transportation provider, the offense shall be  
21 punished by a fine not to exceed two thousand dollars (\$2,000),  
22 or by imprisonment in a county jail not to exceed one year, or by  
23 both the fine and imprisonment.

24 *(b) Alternatively, on or after the operative date of an applicable*  
25 *rule or rules proposed by the California Public Safety Commission,*  
26 *a person who violates this section shall be punished as provided*  
27 *in the applicable sentencing rules.*

28 ~~(b)~~

29 (c) As used in this section, “public transportation provider”  
30 means a publicly or privately owned entity that operates, for the  
31 transportation of persons for hire, a bus, taxicab, streetcar, cable  
32 car, trackless trolley, or other motor vehicle, including a vehicle  
33 operated on stationary rails or on a track or rail suspended in air,  
34 or that operates a schoolbus.

35 ~~(e)~~

36 (d) As used in this section, “on the property of” means the entire  
37 station where public transportation is available, including the  
38 parking lot reserved for the public who utilize the transportation  
39 system.

40 *SEC. 119. Section 243.4 of the Penal Code is amended to read:*

1     243.4. (a) Any person who touches an intimate part of another  
2 person while that person is unlawfully restrained by the accused  
3 or an accomplice, and if the touching is against the will of the  
4 person touched and is for the purpose of sexual arousal, sexual  
5 gratification, or sexual abuse, is guilty of sexual battery. A violation  
6 of this subdivision is punishable by imprisonment in a county jail  
7 for not more than one year, and by a fine not exceeding two  
8 thousand dollars (\$2,000); or by imprisonment in the state prison  
9 for two, three, or four years, and by a fine not exceeding ten  
10 thousand dollars (\$10,000).

11     (b) Any person who touches an intimate part of another person  
12 who is institutionalized for medical treatment and who is seriously  
13 disabled or medically incapacitated, if the touching is against the  
14 will of the person touched, and if the touching is for the purpose  
15 of sexual arousal, sexual gratification, or sexual abuse, is guilty  
16 of sexual battery. A violation of this subdivision is punishable by  
17 imprisonment in a county jail for not more than one year, and by  
18 a fine not exceeding two thousand dollars (\$2,000); or by  
19 imprisonment in the state prison for two, three, or four years, and  
20 by a fine not exceeding ten thousand dollars (\$10,000).

21     (c) Any person who touches an intimate part of another person  
22 for the purpose of sexual arousal, sexual gratification, or sexual  
23 abuse, and the victim is at the time unconscious of the nature of  
24 the act because the perpetrator fraudulently represented that the  
25 touching served a professional purpose, is guilty of sexual battery.  
26 A violation of this subdivision is punishable by imprisonment in  
27 a county jail for not more than one year, and by a fine not  
28 exceeding two thousand dollars (\$2,000); or by imprisonment in  
29 the state prison for two, three, or four years, and by a fine not  
30 exceeding ten thousand dollars (\$10,000).

31     (d) Any person who, for the purpose of sexual arousal, sexual  
32 gratification, or sexual abuse, causes another, against that person's  
33 will while that person is unlawfully restrained either by the accused  
34 or an accomplice, or is institutionalized for medical treatment and  
35 is seriously disabled or medically incapacitated, to masturbate or  
36 touch an intimate part of either of those persons or a third person,  
37 is guilty of sexual battery. A violation of this subdivision is  
38 punishable by imprisonment in a county jail for not more than one  
39 year, and by a fine not exceeding two thousand dollars (\$2,000);

1 or by imprisonment in the state prison for two, three, or four years,  
2 and by a fine not exceeding ten thousand dollars (\$10,000).

3 (e) (1) Any person who touches an intimate part of another  
4 person, if the touching is against the will of the person touched,  
5 and is for the specific purpose of sexual arousal, sexual  
6 gratification, or sexual abuse, is guilty of misdemeanor sexual  
7 battery, punishable by a fine not exceeding two thousand dollars  
8 (\$2,000), or by imprisonment in a county jail not exceeding six  
9 months, or by both that fine and imprisonment. However, if the  
10 defendant was an employer and the victim was an employee of  
11 the defendant, the misdemeanor sexual battery shall be punishable  
12 by a fine not exceeding three thousand dollars (\$3,000), by  
13 imprisonment in a county jail not exceeding six months, or by both  
14 that fine and imprisonment. Notwithstanding any other provision  
15 of law, any amount of a fine above two thousand dollars (\$2,000)  
16 which is collected from a defendant for a violation of this  
17 subdivision shall be transmitted to the State Treasury and, upon  
18 appropriation by the Legislature, distributed to the Department of  
19 Fair Employment and Housing for the purpose of enforcement of  
20 the California Fair Employment and Housing Act (Part 2.8  
21 (commencing with Section 12900) of Division 3 of Title 2 of the  
22 Government Code), including, but not limited to, laws that  
23 proscribe sexual harassment in places of employment. However,  
24 in no event shall an amount over two thousand dollars (\$2,000)  
25 be transmitted to the State Treasury until all fines, including any  
26 restitution fines that may have been imposed upon the defendant,  
27 have been paid in full.

28 (2) As used in this subdivision, “touches” means physical contact  
29 with another person, whether accomplished directly, through the  
30 clothing of the person committing the offense, or through the  
31 clothing of the victim.

32 (f) As used in subdivisions (a), (b), (c), and (d), “touches” means  
33 physical contact with the skin of another person whether  
34 accomplished directly or through the clothing of the person  
35 committing the offense.

36 (g) As used in this section, the following terms have the  
37 following meanings:

38 (1) “Intimate part” means the sexual organ, anus, groin, or  
39 buttocks of any person, and the breast of a female.

(2) “Sexual battery” does not include the crimes defined in Section 261 or 289.

(3) “Seriously disabled” means a person with severe physical or sensory disabilities.

(4) “Medically incapacitated” means a person who is incapacitated as a result of prescribed sedatives, anesthesia, or other medication.

(5) “Institutionalized” means a person who is located voluntarily or involuntarily in a hospital, medical treatment facility, nursing home, acute care facility, or mental hospital.

(6) “Minor” means a person under 18 years of age.

(h) This section shall not be construed to limit or prevent prosecution under any other law which also proscribes a course of conduct that also is proscribed by this section.

(i) In the case of a felony conviction for a violation of this section, the fact that the defendant was an employer and the victim was an employee of the defendant shall be a factor in aggravation in sentencing.

(j) A person who commits a violation of subdivision (a), (b), (c), or (d) against a minor when the person has a prior felony conviction for a violation of this section shall be guilty of a felony, punishable by imprisonment in the state prison for two, three, or four years and a fine not exceeding ten thousand dollars (\$10,000).

(k) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 120. Section 243.6 of the Penal Code is amended to read:

243.6. (a) When a battery is committed against a school employee engaged in the performance of his or her duties, or in retaliation for an act performed in the course of his or her duties, whether on or off campus, during the schoolday or at any other time, and the person committing the offense knows or reasonably should know that the victim is a school employee, the battery is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both the fine and imprisonment. However, if an injury is inflicted on the victim, the battery shall be punishable by imprisonment in a county jail for not more than one year, or by a fine of not more than two thousand dollars (\$2,000), or by



1 imprisonment in the state prison for 16 months, or two or three  
2 years.

3 *(b) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 ~~For~~

8 *(c) For* purposes of this section, “school employee” has the  
9 same meaning as defined in subdivision (d) of Section 245.5.

10 ~~This~~

11 *(d) This* section shall not apply to conduct arising during the  
12 course of an otherwise lawful labor dispute.

13 *SEC. 121. Section 243.7 of the Penal Code is amended to read:*

14 243.7. *(a)* Any person who is a party to a civil or criminal  
15 action in which a jury has been selected to try the case and who,  
16 while the legal action is pending or after the conclusion of the trial  
17 commits a battery against any juror or alternate juror who was  
18 selected and sworn in that legal action shall be punished by a fine  
19 not to exceed five thousand dollars (\$5,000), or by imprisonment  
20 in the county jail not exceeding one year, or by both such fine and  
21 imprisonment, or by the imprisonment in the state prison for 16  
22 months, or for two or three years.

23 *(b) Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who violates this section shall be punished as provided*  
26 *in the applicable sentencing rules.*

27 *SEC. 122. Section 243.8 of the Penal Code is amended to read:*

28 243.8. *(a)* When a battery is committed against a sports official  
29 immediately prior to, during, or immediately following an  
30 interscholastic, intercollegiate, or any other organized amateur or  
31 professional athletic contest in which the sports official is  
32 participating, and the person who commits the offense knows or  
33 reasonably should know that the victim is engaged in the  
34 performance of his or her duties, the offense shall be punishable  
35 by a fine not exceeding two thousand dollars (\$2,000), or by  
36 imprisonment in the county jail not exceeding one year, or by both  
37 that fine and imprisonment.

38 *(b) Alternatively, on or after the operative date of an applicable*  
39 *rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 ~~(b)~~

4 (c) For purposes of this section, “sports official” means any  
5 individual who serves as a referee, umpire, linesman, or who serves  
6 in a similar capacity but may be known by a different title or name  
7 and is duly registered by, or a member of, a local, state, regional,  
8 or national organization engaged in part in providing education  
9 and training to sports officials.

10 SEC. 123. *Section 243.9 of the Penal Code is amended to read:*

11 243.9. (a) Every person confined in any local detention facility  
12 who commits a battery by gassing upon the person of any peace  
13 officer, as defined in Chapter 4.5 (commencing with Section 830)  
14 of Title 3 of Part 2, or employee of the local detention facility is  
15 guilty of aggravated battery and shall be punished by imprisonment  
16 in a county jail or by imprisonment in the state prison for two,  
17 three, or four years.

18 (b) *Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 ~~(b)~~

23 (c) For purposes of this section, “gassing” means intentionally  
24 placing or throwing, or causing to be placed or thrown, upon the  
25 person of another, any human excrement or other bodily fluids or  
26 bodily substances or any mixture containing human excrement or  
27 other bodily fluids or bodily substances that results in actual contact  
28 with the person’s skin or membranes.

29 ~~(e)~~

30 (d) The person in charge of the local detention facility shall use  
31 every available means to immediately investigate all reported or  
32 suspected violations of subdivision (a), including, but not limited  
33 to, the use of forensically acceptable means of preserving and  
34 testing the suspected gassing substance to confirm the presence of  
35 human excrement or other bodily fluids or bodily substances. If  
36 there is probable cause to believe that the inmate has violated  
37 subdivision (a), the chief medical officer of the local detention  
38 facility, or his or her designee, may, when he or she deems it  
39 medically necessary to protect the health of an officer or employee  
40 who may have been subject to a violation of this section, order the

inmate to receive an examination or test for hepatitis or tuberculosis or both hepatitis and tuberculosis on either a voluntary or involuntary basis immediately after the event, and periodically thereafter as determined to be necessary by the medical officer in order to ensure that further hepatitis or tuberculosis transmission does not occur. These decisions shall be consistent with an occupational exposure as defined by the Center for Disease Control and Prevention. The results of any examination or test shall be provided to the officer or employee who has been subject to a reported or suspected violation of this section. Nothing in this subdivision shall be construed to otherwise supersede the operation of Title 8 (commencing with Section 7500). Any person performing tests, transmitting test results, or disclosing information pursuant to this section shall be immune from civil liability for any action taken in accordance with this section.

~~(d)~~

(e) The person in charge of the local detention facility shall refer all reports for which there is probable cause to believe that the inmate has violated subdivision (a) to the local district attorney for prosecution.

~~(e)~~

(f) Nothing in this section shall preclude prosecution under both this section and any other provision of law.

*SEC. 124. Section 244 of the Penal Code is amended to read:*

244. (a) Any person who willfully and maliciously places or throws, or causes to be placed or thrown, upon the person of another, any vitriol, corrosive acid, flammable substance, or caustic chemical of any nature, with the intent to injure the flesh or disfigure the body of that person, is punishable by imprisonment in the state prison for two, three or four years.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~As~~

(c) As used in this section, “flammable substance” means gasoline, petroleum products, or flammable liquids with a flashpoint of 150 degrees Fahrenheit or less.

*SEC. 125. Section 244.5 of the Penal Code is amended to read:*

1     244.5. (a) As used in this section, “stun gun” means any item,  
2     except a less lethal weapon, as defined in Section 12601, used or  
3     intended to be used as either an offensive or defensive weapon  
4     that is capable of temporarily immobilizing a person by the  
5     infliction of an electrical charge.

6     (b) Every person who commits an assault upon the person of  
7     another with a stun gun or less lethal weapon, as defined in Section  
8     12601, shall be punished by imprisonment in a county jail for a  
9     term not exceeding one year, or by imprisonment in the state prison  
10    for 16 months, two, or three years.

11    (c) Every person who commits an assault upon the person of a  
12    peace officer or firefighter with a stun gun or less lethal weapon,  
13    as defined in Section 12601, who knows or reasonably should  
14    know that the person is a peace officer or firefighter engaged in  
15    the performance of his or her duties, when the peace officer or  
16    firefighter is engaged in the performance of his or her duties, shall  
17    be punished by imprisonment in the county jail for a term not  
18    exceeding one year, or by imprisonment in the state prison for two,  
19    three, or four years.

20    (d) This section shall not be construed to preclude or in any way  
21    limit the applicability of Section 245 in any criminal prosecution.

22    (e) *Alternatively, on or after the operative date of an applicable*  
23    *rule or rules proposed by the California Public Safety Commission,*  
24    *a person who violates this section shall be punished as provided*  
25    *in the applicable sentencing rules.*

26    SEC. 126. *Section 245 of the Penal Code is amended to read:*

27    245. (a) (1) Any person who commits an assault upon the  
28    person of another with a deadly weapon or instrument other than  
29    a firearm or by any means of force likely to produce great bodily  
30    injury shall be punished by imprisonment in the state prison for  
31    two, three, or four years, or in a county jail for not exceeding one  
32    year, or by a fine not exceeding ten thousand dollars (\$10,000),  
33    or by both the fine and imprisonment.

34    (2) Any person who commits an assault upon the person of  
35    another with a firearm shall be punished by imprisonment in the  
36    state prison for two, three, or four years, or in a county jail for not  
37    less than six months and not exceeding one year, or by both a fine  
38    not exceeding ten thousand dollars (\$10,000) and imprisonment.

39    (3) Any person who commits an assault upon the person of  
40    another with a machinegun, as defined in Section 12200, or an

1 assault weapon, as defined in Section 12276 or 12276.1, or a .50  
2 BMG rifle, as defined in Section 12278, shall be punished by  
3 imprisonment in the state prison for 4, 8, or 12 years.

4 (b) Any person who commits an assault upon the person of  
5 another with a semiautomatic firearm shall be punished by  
6 imprisonment in the state prison for three, six, or nine years.

7 (c) Any person who commits an assault with a deadly weapon  
8 or instrument, other than a firearm, or by any means likely to  
9 produce great bodily injury upon the person of a peace officer or  
10 firefighter, and who knows or reasonably should know that the  
11 victim is a peace officer or firefighter engaged in the performance  
12 of his or her duties, when the peace officer or firefighter is engaged  
13 in the performance of his or her duties, shall be punished by  
14 imprisonment in the state prison for three, four, or five years.

15 (d) (1) Any person who commits an assault with a firearm upon  
16 the person of a peace officer or firefighter, and who knows or  
17 reasonably should know that the victim is a peace officer or  
18 firefighter engaged in the performance of his or her duties, when  
19 the peace officer or firefighter is engaged in the performance of  
20 his or her duties, shall be punished by imprisonment in the state  
21 prison for four, six, or eight years.

22 (2) Any person who commits an assault upon the person of a  
23 peace officer or firefighter with a semiautomatic firearm and who  
24 knows or reasonably should know that the victim is a peace officer  
25 or firefighter engaged in the performance of his or her duties, when  
26 the peace officer or firefighter is engaged in the performance of  
27 his or her duties, shall be punished by imprisonment in the state  
28 prison for five, seven, or nine years.

29 (3) Any person who commits an assault with a machinegun, as  
30 defined in Section 12200, or an assault weapon, as defined in  
31 Section 12276 or 12276.1, or a .50 BMG rifle, as defined in Section  
32 12278, upon the person of a peace officer or firefighter, and who  
33 knows or reasonably should know that the victim is a peace officer  
34 or firefighter engaged in the performance of his or her duties, shall  
35 be punished by imprisonment in the state prison for 6, 9, or 12  
36 years.

37 (e) *Alternatively, on or after the operative date of an applicable*  
38 *rule or rules proposed by the California Public Safety Commission,*  
39 *a person who violates this section shall be punished as provided*  
40 *in the applicable sentencing rules.*

1     ~~(e)~~

2     (f) When a person is convicted of a violation of this section in  
3 a case involving use of a deadly weapon or instrument or firearm,  
4 and the weapon or instrument or firearm is owned by that person,  
5 the court shall order that the weapon or instrument or firearm be  
6 deemed a nuisance, and it shall be confiscated and disposed of in  
7 the manner provided by Section 12028.

8     ~~(f)~~

9     (g) As used in this section, “peace officer” refers to any person  
10 designated as a peace officer in Chapter 4.5 (commencing with  
11 Section 830) of Title 3 of Part 2.

12     *SEC. 127. Section 245.2 of the Penal Code is amended to read:*

13     245.2. (a) Every person who commits an assault with a deadly  
14 weapon or instrument or by any means of force likely to produce  
15 great bodily injury upon the person of an operator, driver, or  
16 passenger on a bus, taxicab, streetcar, cable car, trackless trolley,  
17 or other motor vehicle, including a vehicle operated on stationary  
18 rails or on a track or rail suspended in the air, used for the  
19 transportation of persons for hire, or upon the person of a station  
20 agent or ticket agent for the entity providing such transportation,  
21 when the driver, operator, or agent is engaged in the performance  
22 of his or her duties, and where the person who commits the assault  
23 knows or reasonably should know that the victim is engaged in  
24 the performance of his or her duties, or is a passenger, shall be  
25 punished by imprisonment in the state prison for three, four, or  
26 five years.

27     (b) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31     *SEC. 128. Section 245.3 of the Penal Code is amended to read:*

32     245.3. (a) Every person who commits an assault with a deadly  
33 weapon or instrument or by any means likely to produce great  
34 bodily injury upon the person of a custodial officer as defined in  
35 Section 831 or 831.5, and who knows or reasonably should know  
36 that such victim is such a custodial officer engaged in the  
37 performance of his duties, shall be punished by imprisonment in  
38 the state prison for three, four, or five years.

39     (b) *Alternatively, on or after the operative date of an applicable*  
40 *rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 ~~When~~

4 (c) *When* a person is convicted of a violation of this section in  
5 a case involving use of a deadly weapon or instrument, and ~~such~~  
6 *that* weapon or instrument is owned by ~~such~~ *that* person, the court  
7 may, in its discretion, order that the weapon or instrument be  
8 deemed a nuisance and shall be confiscated and destroyed in the  
9 manner provided by Section 12028.

10 SEC. 129. *Section 245.5 of the Penal Code is amended to read:*

11 245.5. (a) Every person who commits an assault with a deadly  
12 weapon or instrument, other than a firearm, or by any means likely  
13 to produce great bodily injury upon the person of a school  
14 employee, and who knows or reasonably should know that the  
15 victim is a school employee engaged in the performance of his or  
16 her duties, when that school employee is engaged in the  
17 performance of his or her duties, shall be punished by  
18 imprisonment in the state prison for three, four, or five years, or  
19 in a county jail not exceeding one year.

20 (b) Every person who commits an assault with a firearm upon  
21 the person of a school employee, and who knows or reasonably  
22 should know that the victim is a school employee engaged in the  
23 performance of his or her duties, when the school employee is  
24 engaged in the performance of his or her duties, shall be punished  
25 by imprisonment in the state prison for four, six, or eight years, or  
26 in a county jail for not less than six months and not exceeding one  
27 year.

28 (c) Every person who commits an assault upon the person of a  
29 school employee with a stun gun or taser, and who knows or  
30 reasonably should know that the person is a school employee  
31 engaged in the performance of his or her duties, when the school  
32 employee is engaged in the performance of his or her duties, shall  
33 be punished by imprisonment in a county jail for a term not  
34 exceeding one year or by imprisonment in the state prison for two,  
35 three, or four years.

36 This subdivision shall not be construed to preclude or in any  
37 way limit the applicability of Section 245 in any criminal  
38 prosecution.

39 (d) *Alternatively, on or after the operative date of an applicable*  
40 *rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 ~~(d)~~

4 (e) As used in the section, “school employee” means any person  
5 employed as a permanent or probationary certificated or classified  
6 employee of a school district on a part-time or full-time basis,  
7 including a substitute teacher. “School employee,” as used in this  
8 section, also includes a student teacher, or a school board member.  
9 “School,” as used in this section, has the same meaning as that  
10 term is defined in Section 626.

11 *SEC. 130. Section 245.6 of the Penal Code is amended to read:*

12 245.6. (a) ~~It shall be~~ is unlawful to engage in hazing, as defined  
13 in this section.

14 (b) “Hazing” means any method of initiation or preinitiation  
15 into a student organization or student body, whether or not the  
16 organization or body is officially recognized by an educational  
17 institution, which is likely to cause serious bodily injury to any  
18 former, current, or prospective student of any school, community  
19 college, college, university, or other educational institution in this  
20 state. The term “hazing” does not include customary athletic events  
21 or school-sanctioned events.

22 (c) A violation of this section that does not result in serious  
23 bodily injury is a misdemeanor, punishable by a fine of not less  
24 than one hundred dollars (\$100), nor more than five thousand  
25 dollars (\$5,000), or imprisonment in the county jail for not more  
26 than one year, or both.

27 (d) Any person who personally engages in hazing that results  
28 in death or serious bodily injury as defined in paragraph (4) of  
29 subdivision (f) of Section 243 of the Penal Code, is guilty of either  
30 a misdemeanor or a felony, and shall be punished by imprisonment  
31 in county jail not exceeding one year, or by imprisonment in the  
32 state prison.

33 (e) *Alternatively, on or after the operative date of an applicable*  
34 *rule or rules proposed by the California Public Safety Commission,*  
35 *a person who violates this section shall be punished as provided*  
36 *in the applicable sentencing rules.*

37 ~~(e)~~

38 (f) The person against whom the hazing is directed may  
39 commence a civil action for injury or damages. The action may  
40 be brought against any participants in the hazing, or any



1 organization to which the student is seeking membership whose  
2 agents, directors, trustees, managers, or officers authorized,  
3 requested, commanded, participated in, or ratified the hazing.

4 (f)

5 (g) Prosecution under this section shall not prohibit prosecution  
6 under any other provision of law.

7 *SEC. 131. Section 246 of the Penal Code is amended to read:*

8 246. (a) Any person who ~~shall~~ maliciously and willfully  
9 ~~discharge~~ discharges a firearm at an inhabited dwelling house,  
10 occupied building, occupied motor vehicle, occupied aircraft,  
11 inhabited housecar, as defined in Section 362 of the Vehicle Code,  
12 or inhabited camper, as defined in Section 243 of the Vehicle Code,  
13 is guilty of a felony, and upon conviction shall be punished by  
14 imprisonment in the state prison for three, five, or seven years, or  
15 by imprisonment in the county jail for a term of not less than six  
16 months and not exceeding one year.

17 (b) *Alternatively, on or after the operative date of an applicable*  
18 *rule or rules proposed by the California Public Safety Commission,*  
19 *a person who violates this section shall be punished as provided*  
20 *in the applicable sentencing rules.*

21 ~~As~~

22 (c) As used in this section, “inhabited” means currently being  
23 used for dwelling purposes, whether occupied or not.

24 *SEC. 132. Section 246.3 of the Penal Code is amended to read:*

25 246.3. (a) Except as otherwise authorized by law, any person  
26 who willfully discharges a firearm in a grossly negligent manner  
27 which could result in injury or death to a person is guilty of a public  
28 offense and shall be punished by imprisonment in a county jail not  
29 exceeding one year, or by imprisonment in the state prison.

30 (b) Except as otherwise authorized by law, any person who  
31 willfully discharges a BB device in a grossly negligent manner  
32 which could result in injury or death to a person is guilty of a public  
33 offense and shall be punished by imprisonment in a county jail not  
34 exceeding one year.

35 (c) *Alternatively, on or after the operative date of an applicable*  
36 *rule or rules proposed by the California Public Safety Commission,*  
37 *a person who violates this section shall be punished as provided*  
38 *in the applicable sentencing rules.*

39 (e)

(d) As used in this section, “BB device” means any instrument that expels a projectile, such as a BB or a pellet, through the force of air pressure, gas pressure, or spring action.

*SEC. 133. Section 247 of the Penal Code is amended to read:*

247. (a) Any person who willfully and maliciously discharges a firearm at an unoccupied aircraft is guilty of a felony.

(b) Any person who discharges a firearm at an unoccupied motor vehicle or an uninhabited building or dwelling house is guilty of a public offense punishable by imprisonment in the county jail for not more than one year or in the state prison. This subdivision does not apply to shooting at an abandoned vehicle, unoccupied vehicle, uninhabited building, or dwelling house with the permission of the owner.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

**As**

(d) As used in this section and Section 246 “aircraft” means any contrivance intended for and capable of transporting persons through the airspace.

*SEC. 134. Section 247.5 of the Penal Code is amended to read:*

247.5. (a) Any person who willfully and maliciously discharges a laser at an aircraft, whether in motion or in flight, while occupied, is guilty of a violation of this section, which shall be punishable as either a misdemeanor by imprisonment in the county jail for not more than one year or by a fine of one thousand dollars (\$1,000), or a felony by imprisonment in the state prison for 16 months, two years, or three years, or by a fine of two thousand dollars (\$2,000). This section does not apply to the conduct of laser development activity by or on behalf of the United States Armed Forces.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

**As**

(c) As used in this section, “aircraft” means any contrivance intended for and capable of transporting persons through the airspace.

1 As

2 (d) As used in this section, “laser” means a device that utilizes  
3 the natural oscillations of atoms or molecules between energy  
4 levels for generating coherent electromagnetic radiation in the  
5 ultraviolet, visible, or infrared region of the spectrum, and when  
6 discharged exceeds one milliwatt continuous wave.

7 *SEC. 135. Section 261.5 of the Penal Code is amended to read:*

8 261.5. (a) Unlawful sexual intercourse is an act of sexual  
9 intercourse accomplished with a person who is not the spouse of  
10 the perpetrator, if the person is a minor. For the purposes of this  
11 section, a “minor” is a person under the age of 18 years and an  
12 “adult” is a person who is at least 18 years of age.

13 (b) Any person who engages in an act of unlawful sexual  
14 intercourse with a minor who is not more than three years older  
15 or three years younger than the perpetrator, is guilty of a  
16 misdemeanor.

17 (c) Any person who engages in an act of unlawful sexual  
18 intercourse with a minor who is more than three years younger  
19 than the perpetrator is guilty of either a misdemeanor or a felony,  
20 and shall be punished by imprisonment in a county jail not  
21 exceeding one year, or by imprisonment in the state prison.

22 (d) Any person 21 years of age or older who engages in an act  
23 of unlawful sexual intercourse with a minor who is under 16 years  
24 of age is guilty of either a misdemeanor or a felony, and shall be  
25 punished by imprisonment in a county jail not exceeding one year,  
26 or by imprisonment in the state prison for two, three, or four years.

27 (e) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 ~~(e)~~

32 (f) (1) Notwithstanding any other provision of this section, an  
33 adult who engages in an act of sexual intercourse with a minor in  
34 violation of this section may be liable for civil penalties in the  
35 following amounts:

36 (A) An adult who engages in an act of unlawful sexual  
37 intercourse with a minor less than two years younger than the adult  
38 is liable for a civil penalty not to exceed two thousand dollars  
39 (\$2,000).

1 (B) An adult who engages in an act of unlawful sexual  
2 intercourse with a minor at least two years younger than the adult  
3 is liable for a civil penalty not to exceed five thousand dollars  
4 (\$5,000).

5 (C) An adult who engages in an act of unlawful sexual  
6 intercourse with a minor at least three years younger than the adult  
7 is liable for a civil penalty not to exceed ten thousand dollars  
8 (\$10,000).

9 (D) An adult over the age of 21 years who engages in an act of  
10 unlawful sexual intercourse with a minor under 16 years of age is  
11 liable for a civil penalty not to exceed twenty-five thousand dollars  
12 (\$25,000).

13 (2) The district attorney may bring actions to recover civil  
14 penalties pursuant to this subdivision. From the amounts collected  
15 for each case, an amount equal to the costs of pursuing the action  
16 shall be deposited with the treasurer of the county in which the  
17 judgment was entered, and the remainder shall be deposited in the  
18 Underage Pregnancy Prevention Fund, which is hereby created in  
19 the State Treasury. Amounts deposited in the Underage Pregnancy  
20 Prevention Fund may be used only for the purpose of preventing  
21 underage pregnancy upon appropriation by the Legislature.

22 (3) In addition to any punishment imposed under this section,  
23 the judge may assess a fine not to exceed seventy dollars (\$70)  
24 against any person who violates this section with the proceeds of  
25 this fine to be used in accordance with Section 1463.23. The court  
26 shall, however, take into consideration the defendant's ability to  
27 pay, and no defendant shall be denied probation because of his or  
28 her inability to pay the fine permitted under this subdivision.

29 *SEC. 136. Section 264 of the Penal Code is amended to read:*

30 264. (a) Rape, as defined in Section 261 or 262, is punishable  
31 by imprisonment in the state prison for three, six, or eight years.

32 (b) In addition to any punishment imposed under this section  
33 the judge may assess a fine not to exceed seventy dollars (\$70)  
34 against any person who violates Section 261 or 262 with the  
35 proceeds of this fine to be used in accordance with Section 1463.23.  
36 The court shall, however, take into consideration the defendant's  
37 ability to pay, and no defendant shall be denied probation because  
38 of his or her inability to pay the fine permitted under this  
39 subdivision.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section, or a section for which the punishment is specified in this section, shall be punished as provided in the applicable sentencing rules.*

SEC. 137. *Section 264.1 of the Penal Code is amended to read:*

264.1. (a) The provisions of Section 264 notwithstanding, in any case in which the defendant, voluntarily acting in concert with another person, by force or violence and against the will of the victim, committed an act described in Section 261, 262, or 289, either personally or by aiding and abetting the other person, that fact shall be charged in the indictment or information and if found to be true by the jury, upon a jury trial, or if found to be true by the court, upon a court trial, or if admitted by the defendant, the defendant shall suffer confinement in the state prison for five, seven, or nine years.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 138. *Section 266 of the Penal Code is amended to read:*

266. (a) Every person who inveigles or entices any unmarried female, of previous chaste character, under the age of 18 years, into any house of ill fame, or of assignation, or elsewhere, for the purpose of prostitution, or to have illicit carnal connection with any man; and every person who aids or assists in—~~such that~~ inveiglement or enticement; and every person who, by any false pretenses, false representation, or other fraudulent means, procures any female to have illicit carnal connection with any man, ~~is punishable~~ shall be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, or by a fine not exceeding two thousand dollars (\$2,000), or by both ~~such that~~ fine and imprisonment.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 139. *Section 266a of the Penal Code is amended to read:*

266a. (a) Every person who, within this state, takes any person against his or her will and without his or her consent, or with his

1 or her consent procured by fraudulent inducement or  
2 misrepresentation, for the purpose of prostitution, as defined in  
3 subdivision (b) of Section 647, is punishable by imprisonment in  
4 the state prison, and a fine not exceeding two thousand dollars  
5 (\$2,000).

6 *(b) Alternatively, on or after the operative date of an applicable*  
7 *rule or rules proposed by the California Public Safety Commission,*  
8 *a person who violates this section shall be punished as provided*  
9 *in the applicable sentencing rules.*

10 *SEC. 140. Section 266b of the Penal Code is amended to read:*

11 266b. (a) Every person who takes any other person unlawfully,  
12 and against his or her will, and by force, menace, or duress,  
13 compels him or her to live with such person in an illicit relation,  
14 against his or her consent, or to so live with any other person, is  
15 punishable by imprisonment in the state prison.

16 *(b) Alternatively, on or after the operative date of an applicable*  
17 *rule or rules proposed by the California Public Safety Commission,*  
18 *a person who violates this section shall be punished as provided*  
19 *in the applicable sentencing rules.*

20 *SEC. 141. Section 266c of the Penal Code is amended to read:*

21 266c. (a) Every person who induces any other person to engage  
22 in sexual intercourse, sexual penetration, oral copulation, or  
23 sodomy when his or her consent is procured by false or fraudulent  
24 representation or pretense that is made with the intent to create  
25 fear, and which does induce fear, and that would cause a reasonable  
26 person in like circumstances to act contrary to the person's free  
27 will, and does cause the victim to so act, is punishable by  
28 imprisonment in a county jail for not more than one year or in the  
29 state prison for two, three, or four years.

30 *(b) Alternatively, on or after the operative date of an applicable*  
31 *rule or rules proposed by the California Public Safety Commission,*  
32 *a person who violates this section shall be punished as provided*  
33 *in the applicable sentencing rules.*

34 ~~As~~

35 (c) As used in this section, "fear" means the fear of physical  
36 injury or death to the person or to any relative of the person or  
37 member of the person's family.

38 *SEC. 142. Section 266d of the Penal Code is amended to read:*

39 266d. (a) Any person who receives any money or other  
40 valuable thing for or on account of placing in custody any other

1 person for the purpose of causing the other person to cohabit with  
2 any person to whom the other person is not married, is guilty of a  
3 felony.

4 *(b) Alternatively, on or after the operative date of an applicable*  
5 *rule or rules proposed by the California Public Safety Commission,*  
6 *a person who violates this section shall be punished as provided*  
7 *in the applicable sentencing rules.*

8 *SEC. 143. Section 266e of the Penal Code is amended to read:*

9 266e. (a) Every person who purchases, or pays any money or  
10 other valuable thing for, any person for the purpose of prostitution  
11 as defined in subdivision (b) of Section 647, or for the purpose of  
12 placing ~~such~~ that person, for immoral purposes, in any house or  
13 place against his or her will, is guilty of a felony.

14 *(b) Alternatively, on or after the operative date of an applicable*  
15 *rule or rules proposed by the California Public Safety Commission,*  
16 *a person who violates this section shall be punished as provided*  
17 *in the applicable sentencing rules.*

18 *SEC. 144. Section 266f of the Penal Code is amended to read:*

19 266f. (a) Every person who sells any person or receives any  
20 money or other valuable thing for or on account of his or her  
21 placing in custody, for immoral purposes, any person, whether  
22 with or without his or her consent, is guilty of a felony.

23 *(b) Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who violates this section shall be punished as provided*  
26 *in the applicable sentencing rules.*

27 *SEC. 145. Section 266g of the Penal Code is amended to read:*

28 266g. (a) Every man who, by force, intimidation, threats,  
29 persuasion, promises, or any other means, places or leaves, or  
30 procures any other person or persons to place or leave, his wife in  
31 a house of prostitution, or connives at or consents to, or permits,  
32 the placing or leaving of his wife in a house of prostitution, or  
33 allows or permits her to remain therein, is guilty of a felony and  
34 punishable by imprisonment in the state prison for two, three, or  
35 four years; ~~and in all prosecutions under.~~

36 *(b) Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates this section shall be punished as provided*  
39 *in the applicable sentencing rules.*

1     (c) *In any prosecution under this section, a wife is a competent*  
2 *witness against her husband.*

3     *SEC. 146. Section 266h of the Penal Code is amended to read:*

4     266h. (a) Except as provided in subdivision (b), any person  
5 who, knowing another person is a prostitute, lives or derives  
6 support or maintenance in whole or in part from the earnings or  
7 proceeds of the person's prostitution, or from money loaned or  
8 advanced to or charged against that person by any keeper or  
9 manager or inmate of a house or other place where prostitution is  
10 practiced or allowed, or who solicits or receives compensation for  
11 soliciting for the person, is guilty of pimping, a felony, and shall  
12 be punishable by imprisonment in the state prison for three, four,  
13 or six years.

14     (b) Any person who, knowing another person is a prostitute,  
15 lives or derives support or maintenance in whole or in part from  
16 the earnings or proceeds of the person's prostitution, or from  
17 money loaned or advanced to or charged against that person by  
18 any keeper or manager or inmate of a house or other place where  
19 prostitution is practiced or allowed, or who solicits or receives  
20 compensation for soliciting for the person, when the prostitute is  
21 a minor, is guilty of pimping a minor, a felony, and shall be  
22 punishable as follows:

23     (1) If the person engaged in prostitution is a minor over the age  
24 of 16 years, the offense is punishable by imprisonment in the state  
25 prison for three, four, or six years.

26     (2) If the person engaged in prostitution is under 16 years of  
27 age, the offense is punishable by imprisonment in the state prison  
28 for three, six, or eight years.

29     (c) *Alternatively, on or after the operative date of an applicable*  
30 *rule or rules proposed by the California Public Safety Commission,*  
31 *a person who violates this section shall be punished as provided*  
32 *in the applicable sentencing rules.*

33     *SEC. 147. Section 266i of the Penal Code is amended to read:*

34     266i. (a) Except as provided in subdivision (b), any person  
35 who does any of the following is guilty of pandering, a felony, and  
36 shall be punishable by imprisonment in the state prison for three,  
37 four, or six years:

38     (1) Procures another person for the purpose of prostitution.



1 (2) By promises, threats, violence, or by any device or scheme,  
2 causes, induces, persuades or encourages another person to become  
3 a prostitute.

4 (3) Procures for another person a place as an inmate in a house  
5 of prostitution or as an inmate of any place in which prostitution  
6 is encouraged or allowed within this state.

7 (4) By promises, threats, violence or by any device or scheme,  
8 causes, induces, persuades or encourages an inmate of a house of  
9 prostitution, or any other place in which prostitution is encouraged  
10 or allowed, to remain therein as an inmate.

11 (5) By fraud or artifice, or by duress of person or goods, or by  
12 abuse of any position of confidence or authority, procures another  
13 person for the purpose of prostitution, or to enter any place in  
14 which prostitution is encouraged or allowed within this state, or  
15 to come into this state or leave this state for the purpose of  
16 prostitution.

17 (6) Receives or gives, or agrees to receive or give, any money  
18 or thing of value for procuring, or attempting to procure, another  
19 person for the purpose of prostitution, or to come into this state or  
20 leave this state for the purpose of prostitution.

21 (b) Any person who does any of the acts described in subdivision  
22 (a) with another person who is a minor is guilty of pandering, a  
23 felony, and shall be punishable as follows:

24 (1) If the other person is a minor over the age of 16 years, the  
25 offense is punishable by imprisonment in the state prison for three,  
26 four, or six years.

27 (2) If the other person is under 16 years of age, the offense is  
28 punishable by imprisonment in the state prison for three, six, or  
29 eight years.

30 (c) *Alternatively, on or after the operative date of an applicable*  
31 *rule or rules proposed by the California Public Safety Commission,*  
32 *a person who violates this section shall be punished as provided*  
33 *in the applicable sentencing rules.*

34 SEC. 148. Section 266j of the Penal Code is amended to read:

35 266j. (a) Any person who intentionally gives, transports,  
36 provides, or makes available, or who offers to give, transport,  
37 provide, or make available to another person, a child under the age  
38 of 16 for the purpose of any lewd or lascivious act as defined in  
39 Section 288, or who causes, induces, or persuades a child under  
40 the age of 16 to engage in such an act with another person, is guilty

1 of a felony and shall be imprisoned in the state prison for a term  
2 of three, six, or eight years, and by a fine not to exceed fifteen  
3 thousand dollars (\$15,000).

4 *(b) Alternatively, on or after the operative date of an applicable*  
5 *rule or rules proposed by the California Public Safety Commission,*  
6 *a person who violates this section shall be punished as provided*  
7 *in the applicable sentencing rules.*

8 *SEC. 149. Section 266k of the Penal Code is amended to read:*

9 266k. (a) Upon the conviction of any person for a violation  
10 of Section 266h, 266i, or 266j, the court may, in addition to any  
11 other penalty or fine imposed, order the defendant to pay an  
12 additional fine not to exceed five thousand dollars (\$5,000). In  
13 setting the amount of the fine, the court shall consider any relevant  
14 factors including, but not limited to, the seriousness and gravity  
15 of the offense and the circumstances of its commission, whether  
16 the defendant derived any economic gain as the result of the crime,  
17 and the extent to which the victim suffered losses as a result of the  
18 crime. Every fine imposed and collected under this section shall  
19 be deposited in the Victim-Witness Assistance Fund to be available  
20 for appropriation to fund child sexual exploitation and child sexual  
21 abuse victim counseling centers and prevention programs under  
22 Section 13837.

23 (b) If the court orders a fine to be imposed pursuant to this  
24 section, the actual administrative cost of collecting that fine, not  
25 to exceed 2 percent of the total amount paid, may be paid into the  
26 general fund of the county treasury for the use and benefit of the  
27 county.

28 *(c) Alternatively, on or after the operative date of an applicable*  
29 *rule or rules proposed by the California Public Safety Commission,*  
30 *the court may impose a fine as provided in the applicable*  
31 *sentencing rules.*

32 *SEC. 150. Section 267 of the Penal Code is amended to read:*

33 267. (a) Every person who takes away any other person under  
34 the age of 18 years from the father, mother, guardian, or other  
35 person having the legal charge of the other person, without their  
36 consent, for the purpose of prostitution, is punishable by  
37 imprisonment in the state prison, and a fine not exceeding two  
38 thousand dollars (\$2,000).

39 *(b) Alternatively, on or after the operative date of an applicable*  
40 *rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 *SEC. 151. Section 269 of the Penal Code is amended to read:*

4 269. (a) Any person who commits any of the following acts  
5 upon a child who is under 14 years of age and seven or more years  
6 younger than the person is guilty of aggravated sexual assault of  
7 a child:

8 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)  
9 of Section 261.

10 (2) Rape or sexual penetration, in concert, in violation of Section  
11 264.1.

12 (3) Sodomy, in violation of paragraph (2) or (3) of subdivision  
13 (c), or subdivision (d), of Section 286.

14 (4) Oral copulation, in violation of paragraph (2) or (3) of  
15 subdivision (c), or subdivision (d), of Section 288a.

16 (5) Sexual penetration, in violation of subdivision (a) of Section  
17 289.

18 (b) Any person who violates this section is guilty of a felony  
19 and shall be punished by imprisonment in the state prison for 15  
20 years to life.

21 (c) The court shall impose a consecutive sentence for each  
22 offense that results in a conviction under this section if the crimes  
23 involve separate victims or involve the same victim on separate  
24 occasions as defined in subdivision (d) of Section 667.6.

25 *(d) Alternatively, on or after the operative date of an applicable*  
26 *rule or rules proposed by the California Public Safety Commission,*  
27 *a person who violates this section shall be punished as provided*  
28 *in the applicable sentencing rules, except that no sentencing rule*  
29 *shall change any provision of this section that was specifically*  
30 *added by voter initiative.*

31 *SEC. 152. Section 270 of the Penal Code is amended to read:*

32 270. (a) If a parent of a minor child willfully omits, without  
33 lawful excuse, to furnish necessary clothing, food, shelter or  
34 medical attendance, or other remedial care for his or her child, he  
35 or she is guilty of a misdemeanor punishable by a fine not  
36 exceeding two thousand dollars (\$2,000), or by imprisonment in  
37 the county jail not exceeding one year, or by both ~~such~~ *that* fine  
38 and imprisonment. If a court of competent jurisdiction has made  
39 a final adjudication in either a civil or a criminal action that a  
40 person is the parent of a minor child and the person has notice of

1 ~~such that~~ adjudication and he or she then willfully omits, without  
2 lawful excuse, to furnish necessary clothing, food, shelter, medical  
3 attendance or other remedial care for his or her child, this conduct  
4 is punishable by imprisonment in the county jail not exceeding  
5 one year or in a state prison for a determinate term of one year and  
6 one day, or by a fine not exceeding two thousand dollars (\$2,000),  
7 or by both ~~such that~~ fine and imprisonment. ~~This statute~~

8 (b) *Alternatively, on or after the operative date of an applicable*  
9 *rule or rules proposed by the California Public Safety Commission,*  
10 *a person who violates this section shall be punished as provided*  
11 *in the applicable sentencing rules.*

12 (c) *This section shall not be construed so as to relieve ~~such a~~*  
13 *parent from the criminal liability ~~defined herein for such imposed~~*  
14 *by this section for that omission merely because the other parent*  
15 *of ~~such the~~ child is legally entitled to the custody of ~~such the~~ child*  
16 *nor because the other parent of ~~such the~~ child or any other person*  
17 *or organization voluntarily or involuntarily furnishes ~~such~~*  
18 *necessary food, clothing, shelter or medical attendance, or other*  
19 *remedial care for ~~such the~~ child, or ~~undertakes attempts~~ to do so.*

20 **Proof**

21 (d) *Proof of abandonment or desertion of a child by ~~such a~~*  
22 *parent, or the omission by ~~such a~~ parent to furnish necessary food,*  
23 *clothing, shelter or medical attendance or other remedial care for*  
24 *his or her child is prima facie evidence that ~~such the~~ abandonment*  
25 *or desertion or omission to furnish necessary food, clothing, shelter*  
26 *or medical attendance or other remedial care is willful and without*  
27 *lawful excuse.*

28 **The**

29 (e) *The court, in determining the ability of the parent to support*  
30 *his or her child, shall consider all income, including social*  
31 *insurance benefits and gifts.*

32 **The**

33 (f) *The provisions of this section are applicable whether the*  
34 *parents of ~~such the~~ child are or were ever married or divorced, and*  
35 *regardless of any decree made in any divorce action relative to*  
36 *alimony or to the support of the child. A child conceived but not*  
37 *yet born is to be deemed an existing person insofar as this section*  
38 *is concerned.*

39 **The**

(g) The husband of a woman who bears a child as a result of artificial insemination shall be considered the father of that child for the purpose of this section, if he consented in writing to the artificial insemination.

If

(h) If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute “other remedial care”, care,” as used in this section.

SEC. 153. Section 271 of the Penal Code is amended to read:

271. (a) Every parent of any child under the age of 14 years, and every person to whom ~~any such~~ *such a* child has been confided for nurture, or education, who deserts ~~such~~ *that* child in any place whatever with intent to abandon it, is punishable by imprisonment in the state prison or in the county jail not exceeding one year or by fine not exceeding one thousand dollars (\$1,000) or by both.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 154. Section 271a of the Penal Code is amended to read:

271a. (a) Every person who knowingly and willfully abandons, or who, having ability so to do, fails or refuses to maintain his or her minor child under the age of 14 years, or who falsely, knowing the same to be false, represents to any manager, officer or agent of any orphan asylum or charitable institution for the care of orphans, that any child for whose admission into ~~such~~ *that* asylum or institution application has been made is an orphan, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year, or by fine not exceeding one thousand dollars (\$1,000), or by both.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 155. Section 272 of the Penal Code is amended to read:

272. (a) (1) Every person who commits any act or omits the performance of any duty, which act or omission causes or tends to cause or encourage any person under the age of 18 years to come

1 within the provisions of Section 300, 601, or 602 of the Welfare  
2 and Institutions Code or which act or omission contributes thereto,  
3 or any person who, by any act or omission, or by threats,  
4 commands, or persuasion, induces or endeavors to induce any  
5 person under the age of 18 years or any ward or dependent child  
6 of the juvenile court to fail or refuse to conform to a lawful order  
7 of the juvenile court, or to do or to perform any act or to follow  
8 any course of conduct or to so live as would cause or manifestly  
9 tend to cause that person to become or to remain a person within  
10 the provisions of Section 300, 601, or 602 of the Welfare and  
11 Institutions Code, is guilty of a misdemeanor and upon conviction  
12 thereof shall be punished by a fine not exceeding two thousand  
13 five hundred dollars (\$2,500), or by imprisonment in the county  
14 jail for not more than one year, or by both fine and imprisonment  
15 in a county jail, or may be released on probation for a period not  
16 exceeding five years.

17 (2) For purposes of this subdivision, a parent or legal guardian  
18 to any person under the age of 18 years shall have the duty to  
19 exercise reasonable care, supervision, protection, and control over  
20 their minor child.

21 (b) (1) An adult stranger who is 21 years of age or older, who  
22 knowingly contacts or communicates with a minor who is under  
23 14 years of age, who knew or reasonably should have known that  
24 the minor is under 14 years of age, for the purpose of persuading  
25 and luring, or transporting, or attempting to persuade and lure, or  
26 transport, that minor away from the minor's home or from any  
27 location known by the minor's parent, legal guardian, or custodian,  
28 to be a place where the minor is located, for any purpose, without  
29 the express consent of the minor's parent or legal guardian, and  
30 with the intent to avoid the consent of the minor's parent or legal  
31 guardian, is guilty of an infraction or a misdemeanor, subject to  
32 subdivision (d) of Section 17.

33 (2) This subdivision shall not apply in an emergency situation.

34 (3) As used in this subdivision, the following terms are defined  
35 to mean:

36 (A) "Emergency situation" means a situation where the minor  
37 is threatened with imminent bodily harm, emotional harm, or  
38 psychological harm.

1 (B) “Contact” or “communication” includes, but is not limited  
2 to, the use of a telephone or the Internet, as defined in Section  
3 17538 of the Business and Professions Code.

4 (C) “Stranger” means a person of casual acquaintance with  
5 whom no substantial relationship exists, or an individual with  
6 whom a relationship has been established or promoted for the  
7 primary purpose of victimization, as defined in subdivision (e) of  
8 Section 6600 of the Welfare and Institutions Code.

9 (D) “Express consent” means oral or written permission that is  
10 positive, direct, and unequivocal, requiring no inference or  
11 implication to supply its meaning.

12 *(c) Alternatively, on or after the operative date of an applicable*  
13 *rule or rules proposed by the California Public Safety Commission,*  
14 *a person who violates this section shall be punished as provided*  
15 *in the applicable sentencing rules.*

16 ~~(4)~~

17 *(d)* This section shall not be interpreted to criminalize acts of  
18 persons contacting minors within the scope and course of their  
19 employment, or status as a volunteer of a recognized civic or  
20 charitable organization.

21 ~~(5)~~

22 *(e)* This section is intended to protect minors and to help parents  
23 and legal guardians exercise reasonable care, supervision,  
24 protection, and control over minor children.

25 *SEC. 156. Section 273a of the Penal Code is amended to read:*

26 273a. (a) Any person who, under circumstances or conditions  
27 likely to produce great bodily harm or death, willfully causes or  
28 permits any child to suffer, or inflicts thereon unjustifiable physical  
29 pain or mental suffering, or having the care or custody of any child,  
30 willfully causes or permits the person or health of that child to be  
31 injured, or willfully causes or permits that child to be placed in a  
32 situation where his or her person or health is endangered, shall be  
33 punished by imprisonment in a county jail not exceeding one year,  
34 or in the state prison for two, four, or six years.

35 (b) Any person who, under circumstances or conditions other  
36 than those likely to produce great bodily harm or death, willfully  
37 causes or permits any child to suffer, or inflicts thereon  
38 unjustifiable physical pain or mental suffering, or having the care  
39 or custody of any child, willfully causes or permits the person or  
40 health of that child to be injured, or willfully causes or permits

1 that child to be placed in a situation where his or her person or  
2 health may be endangered, is guilty of a misdemeanor.

3 (c) If a person is convicted of violating this section and probation  
4 is granted, the court shall require the following minimum  
5 conditions of probation:

6 (1) A mandatory minimum period of probation of 48 months.

7 (2) A criminal court protective order protecting the victim from  
8 further acts of violence or threats, and, if appropriate, residence  
9 exclusion or stay-away conditions.

10 (3) (A) Successful completion of no less than one year of a  
11 child abuser's treatment counseling program approved by the  
12 probation department. The defendant shall be ordered to begin  
13 participation in the program immediately upon the grant of  
14 probation. The counseling program shall meet the criteria specified  
15 in Section 273.1. The defendant shall produce documentation of  
16 program enrollment to the court within 30 days of enrollment,  
17 along with quarterly progress reports.

18 (B) The terms of probation for offenders shall not be lifted until  
19 all reasonable fees due to the counseling program have been paid  
20 in full, but in no case shall probation be extended beyond the term  
21 provided in subdivision (a) of Section 1203.1. If the court finds  
22 that the defendant does not have the ability to pay the fees based  
23 on the defendant's changed circumstances, the court may reduce  
24 or waive the fees.

25 (4) If the offense was committed while the defendant was under  
26 the influence of drugs or alcohol, the defendant shall abstain from  
27 the use of drugs or alcohol during the period of probation and shall  
28 be subject to random drug testing by his or her probation officer.

29 (5) The court may waive any of the above minimum conditions  
30 of probation upon a finding that the condition would not be in the  
31 best interests of justice. The court shall state on the record its  
32 reasons for any waiver.

33 *(d) Alternatively, on or after the operative date of an applicable*  
34 *rule or rules proposed by the California Public Safety Commission,*  
35 *a person who violates this section shall be punished as provided*  
36 *in the applicable sentencing rules.*

37 *SEC. 157. Section 273ab of the Penal Code is amended to*  
38 *read:*

39 273ab. (a) Any person who, having the care or custody of a  
40 child who is under eight years of age, assaults the child by means



1 of force that to a reasonable person would be likely to produce  
2 great bodily injury, resulting in the child's death, shall be punished  
3 by imprisonment in the state prison for 25 years to life. Nothing  
4 in this section shall be construed as affecting the applicability of  
5 subdivision (a) of Section 187 or Section 189.

6 *(b) Alternatively, on or after the operative date of an applicable*  
7 *rule or rules proposed by the California Public Safety Commission,*  
8 *a person who violates this section shall be punished as provided*  
9 *in the applicable sentencing rules.*

10 SEC. 158. Section 273d of the Penal Code is amended to read:

11 273d. (a) Any person who willfully inflicts upon a child any  
12 cruel or inhuman corporal punishment or an injury resulting in a  
13 traumatic condition is guilty of a felony and shall be punished by  
14 imprisonment in the state prison for two, four, or six years, or in  
15 a county jail for not more than one year, by a fine of up to six  
16 thousand dollars (\$6,000), or by both that imprisonment and fine.

17 (b) Any person who is found guilty of violating subdivision (a)  
18 shall receive a four-year enhancement for a prior conviction of  
19 that offense provided that no additional term shall be imposed  
20 under this subdivision for any prison term served prior to a period  
21 of 10 years in which the defendant remained free of both prison  
22 custody and the commission of an offense that results in a felony  
23 conviction.

24 (c) If a person is convicted of violating this section and probation  
25 is granted, the court shall require the following minimum  
26 conditions of probation:

27 (1) A mandatory minimum period of probation of 36 months.

28 (2) A criminal court protective order protecting the victim from  
29 further acts of violence or threats, and, if appropriate, residence  
30 exclusion or stay-away conditions.

31 (3) (A) Successful completion of no less than one year of a  
32 child abuser's treatment counseling program. The defendant shall  
33 be ordered to begin participation in the program immediately upon  
34 the grant of probation. The counseling program shall meet the  
35 criteria specified in Section 273.1. The defendant shall produce  
36 documentation of program enrollment to the court within 30 days  
37 of enrollment, along with quarterly progress reports.

38 (B) The terms of probation for offenders shall not be lifted until  
39 all reasonable fees due to the counseling program have been paid  
40 in full, but in no case shall probation be extended beyond the term

1 provided in subdivision (a) of Section 1203.1. If the court finds  
2 that the defendant does not have the ability to pay the fees based  
3 on the defendant's changed circumstances, the court may reduce  
4 or waive the fees.

5 (4) If the offense was committed while the defendant was under  
6 the influence of drugs or alcohol, the defendant shall abstain from  
7 the use of drugs or alcohol during the period of probation and shall  
8 be subject to random drug testing by his or her probation officer.

9 (5) The court may waive any of the above minimum conditions  
10 of probation upon a finding that the condition would not be in the  
11 best interests of justice. The court shall state on the record its  
12 reasons for any waiver.

13 *(d) Alternatively, on or after the operative date of an applicable*  
14 *rule or rules proposed by the California Public Safety Commission,*  
15 *a person who violates this section shall be punished as provided*  
16 *in the applicable sentencing rules.*

17 SEC. 159. Section 273.4 of the Penal Code is amended to read:

18 273.4. (a) If the act constituting a felony violation of  
19 subdivision (a) of Section 273a was female genital mutilation, as  
20 defined in subdivision (b), the defendant shall be punished by an  
21 additional term of imprisonment in the state prison for one year,  
22 in addition and consecutive to the punishment prescribed by  
23 Section 273a.

24 *(b) Alternatively, on or after the operative date of an applicable*  
25 *rule or rules proposed by the California Public Safety Commission,*  
26 *a person who violates this section shall be punished as provided*  
27 *in the applicable sentencing rules.*

28 ~~(b)~~

29 (c) "Female genital mutilation" means the excision or  
30 infibulation of the labia majora, labia minora, clitoris, or vulva,  
31 performed for nonmedical purposes.

32 ~~(e)~~

33 (d) Nothing in this section shall preclude prosecution under  
34 Section 203, 205, or 206 or any other provision of law.

35 SEC. 160. Section 273.5 of the Penal Code is amended to read:

36 273.5. (a) Any person who willfully inflicts upon a person  
37 who is his or her spouse, former spouse, cohabitant, former  
38 cohabitant, or the mother or father of his or her child, corporal  
39 injury resulting in a traumatic condition, is guilty of a felony, and  
40 upon conviction thereof shall be punished by imprisonment in the

1 state prison for two, three, or four years, or in a county jail for not  
2 more than one year, or by a fine of up to six thousand dollars  
3 (\$6,000) or by both that fine and imprisonment.

4 (b) Holding oneself out to be the husband or wife of the person  
5 with whom one is cohabiting is not necessary to constitute  
6 cohabitation as the term is used in this section.

7 (c) As used in this section, “traumatic condition” means a  
8 condition of the body, such as a wound or external or internal  
9 injury, whether of a minor or serious nature, caused by a physical  
10 force.

11 (d) For the purpose of this section, a person shall be considered  
12 the father or mother of another person’s child if the alleged male  
13 parent is presumed the natural father under Sections 7611 and 7612  
14 of the Family Code.

15 (e) (1) Any person convicted of violating this section for acts  
16 occurring within seven years of a previous conviction under  
17 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,  
18 244, 244.5, or 245, shall be punished by imprisonment in a county  
19 jail for not more than one year, or by imprisonment in the state  
20 prison for two, four, or five years, or by both imprisonment and a  
21 fine of up to ten thousand dollars (\$10,000).

22 (2) Any person convicted of a violation of this section for acts  
23 occurring within seven years of a previous conviction under  
24 subdivision (e) of Section 243 shall be punished by imprisonment  
25 in the state prison for two, three, or four years, or in a county jail  
26 for not more than one year, or by a fine of up to ten thousand  
27 dollars (\$10,000), or by both that imprisonment and fine.

28 (f) If probation is granted to any person convicted under  
29 subdivision (a), the court shall impose probation consistent with  
30 the provisions of Section 1203.097.

31 (g) If probation is granted, or the execution or imposition of a  
32 sentence is suspended, for any defendant convicted under  
33 subdivision (a) who has been convicted of any prior offense  
34 specified in subdivision (e), the court shall impose one of the  
35 following conditions of probation:

36 (1) If the defendant has suffered one prior conviction within the  
37 previous seven years for a violation of any offense specified in  
38 subdivision (e), it shall be a condition thereof, in addition to the  
39 provisions contained in Section 1203.097, that he or she be  
40 imprisoned in a county jail for not less than 15 days.

(2) If the defendant has suffered two or more prior convictions within the previous seven years for a violation of any offense specified in subdivision (e), it shall be a condition of probation, in addition to the provisions contained in Section 1203.097, that he or she be imprisoned in a county jail for not less than 60 days.

(3) The court, upon a showing of good cause, may find that the mandatory imprisonment required by this subdivision shall not be imposed and shall state on the record its reasons for finding good cause.

(h) If probation is granted upon conviction of a violation of subdivision (a), the conditions of probation may include, consistent with the terms of probation imposed pursuant to Section 1203.097, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars (\$5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under this subdivision, the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court-ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, as operative on or before August 2, 1995, or Section 1202.4, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

(i) Upon conviction under subdivision (a), the sentencing court shall also consider issuing an order restraining the defendant from any contact with the victim, which may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations,

1 and the safety of the victim and his or her immediate family. This  
2 protective order may be issued by the court whether the defendant  
3 is sentenced to state prison, county jail, or if imposition of sentence  
4 is suspended and the defendant is placed on probation.

5 *(j) Alternatively, on or after the operative date of an applicable*  
6 *rule or rules proposed by the California Public Safety Commission,*  
7 *a person who violates this section shall be punished as provided*  
8 *in the applicable sentencing rules.*

9 *SEC. 161. Section 273.6 of the Penal Code is amended to read:*

10 273.6. (a) Any intentional and knowing violation of a  
11 protective order, as defined in Section 6218 of the Family Code,  
12 or of an order issued pursuant to Section 527.6 or 527.8 of the  
13 Code of Civil Procedure, or Section 15657.03 of the Welfare and  
14 Institutions Code, is a misdemeanor punishable by a fine of not  
15 more than one thousand dollars (\$1,000), or by imprisonment in  
16 a county jail for not more than one year, or by both that fine and  
17 imprisonment.

18 (b) In the event of a violation of subdivision (a) which results  
19 in physical injury, the person shall be punished by a fine of not  
20 more than two thousand dollars (\$2,000), or by imprisonment in  
21 a county jail for not less than 30 days nor more than one year, or  
22 by both that fine and imprisonment. However, if the person is  
23 imprisoned in a county jail for at least 48 hours, the court may, in  
24 the interest of justice and for reasons stated on the record, reduce  
25 or eliminate the 30-day minimum imprisonment required by this  
26 subdivision. In determining whether to reduce or eliminate the  
27 minimum imprisonment pursuant to this subdivision, the court  
28 shall consider the seriousness of the facts before the court, whether  
29 there are additional allegations of a violation of the order during  
30 the pendency of the case before the court, the probability of future  
31 violations, the safety of the victim, and whether the defendant has  
32 successfully completed or is making progress with counseling.

33 (c) Subdivisions (a) and (b) shall apply to the following court  
34 orders:

35 (1) Any order issued pursuant to Section 6320 or 6389 of the  
36 Family Code.

37 (2) An order excluding one party from the family dwelling or  
38 from the dwelling of the other.

1 (3) An order enjoining a party from specified behavior which  
2 the court determined was necessary to effectuate the order  
3 described in subdivision (a).

4 (4) Any order issued by another state that is recognized under  
5 Part 5 (commencing with Section 6400) of Division 10 of the  
6 Family Code.

7 (d) A subsequent conviction for a violation of an order described  
8 in subdivision (a), occurring within seven years of a prior  
9 conviction for a violation of an order described in subdivision (a)  
10 and involving an act of violence or “a credible threat” of violence,  
11 as defined in subdivision (c) of Section 139, is punishable by  
12 imprisonment in a county jail not to exceed one year, or in the  
13 state prison.

14 (e) In the event of a subsequent conviction for a violation of an  
15 order described in subdivision (a) for an act occurring within one  
16 year of a prior conviction for a violation of an order described in  
17 subdivision (a) that results in physical injury to a victim, the person  
18 shall be punished by a fine of not more than two thousand dollars  
19 (\$2,000), or by imprisonment in a county jail for not less than six  
20 months nor more than one year, by both that fine and  
21 imprisonment, or by imprisonment in the state prison. However,  
22 if the person is imprisoned in a county jail for at least 30 days, the  
23 court may, in the interest of justice and for reasons stated in the  
24 record, reduce or eliminate the six-month minimum imprisonment  
25 required by this subdivision. In determining whether to reduce or  
26 eliminate the minimum imprisonment pursuant to this subdivision,  
27 the court shall consider the seriousness of the facts before the court,  
28 whether there are additional allegations of a violation of the order  
29 during the pendency of the case before the court, the probability  
30 of future violations, the safety of the victim, and whether the  
31 defendant has successfully completed or is making progress with  
32 counseling.

33 (f) The prosecuting agency of each county shall have the primary  
34 responsibility for the enforcement of orders described in  
35 subdivisions (a), (b), (d), and (e).

36 (g) (1) Every person who owns, possesses, purchases, or  
37 receives a firearm knowing he or she is prohibited from doing so  
38 by the provisions of a protective order as defined in Section 136.2  
39 of this code, Section 6218 of the Family Code, or Section 527.6  
40 or 527.8 of the Code of Civil Procedure, or Section 15657.03 of

1 the Welfare and Institutions Code, shall be punished under the  
2 provisions of subdivision (g) of Section 12021.

3 (2) Every person subject to a protective order described in  
4 paragraph (1) shall not be prosecuted under this section for owning,  
5 possessing, purchasing, or receiving a firearm to the extent that  
6 firearm is granted an exemption pursuant to subdivision (f) of  
7 Section 527.9 of the Code of Civil Procedure, or subdivision (h)  
8 of Section 6389 of the Family Code.

9 (h) If probation is granted upon conviction of a violation of  
10 subdivision (a), (b), (c), (d), or (e), the court shall impose probation  
11 consistent with the provisions of Section 1203.097, and the  
12 conditions of probation may include, in lieu of a fine, one or both  
13 of the following requirements:

14 (1) That the defendant make payments to a battered women's  
15 shelter or to a shelter for abused elder persons or dependent adults,  
16 up to a maximum of five thousand dollars (\$5,000), pursuant to  
17 Section 1203.097.

18 (2) That the defendant reimburse the victim for reasonable costs  
19 of counseling and other reasonable expenses that the court finds  
20 are the direct result of the defendant's offense.

21 (i) For any order to pay a fine, make payments to a battered  
22 women's shelter, or pay restitution as a condition of probation  
23 under subdivision (e), the court shall make a determination of the  
24 defendant's ability to pay. In no event shall any order to make  
25 payments to a battered women's shelter be made if it would impair  
26 the ability of the defendant to pay direct restitution to the victim  
27 or court-ordered child support. Where the injury to a married person  
28 is caused in whole or in part by the criminal acts of his or her  
29 spouse in violation of this section, the community property may  
30 not be used to discharge the liability of the offending spouse for  
31 restitution to the injured spouse, required by Section 1203.04, as  
32 operative on or before August 2, 1995, or Section 1202.4, or to a  
33 shelter for costs with regard to the injured spouse and dependents,  
34 required by this section, until all separate property of the offending  
35 spouse is exhausted.

36 (j) *Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates this section shall be punished as provided*  
39 *in the applicable sentencing rules.*

1     *SEC. 162. Section 273.65 of the Penal Code is amended to*  
2     *read:*

3     273.65. (a) Any intentional and knowing violation of a  
4     protective order issued pursuant to Section 213.5, 304, or 362.4  
5     of the Welfare and Institutions Code is a misdemeanor punishable  
6     by a fine of not more than one thousand dollars (\$1,000), or by  
7     imprisonment in a county jail for not more than one year, or by  
8     both the fine and imprisonment.

9     (b) In the event of a violation of subdivision (a) which results  
10    in physical injury, the person shall be punished by a fine of not  
11    more than two thousand dollars (\$2,000), or by imprisonment in  
12    a county jail for not less than 30 days nor more than one year, or  
13    by both the fine and imprisonment. However, if the person is  
14    imprisoned in a county jail for at least 48 hours, the court may, in  
15    the interests of justice and for reasons stated on the record, reduce  
16    or eliminate the 30-day minimum imprisonment required by this  
17    subdivision. In determining whether to reduce or eliminate the  
18    minimum imprisonment pursuant to this subdivision, the court  
19    shall consider the seriousness of the facts before the court, whether  
20    there are additional allegations of a violation of the order during  
21    the pendency of the case before the court, the probability of future  
22    violations, the safety of the victim, and whether the defendant has  
23    successfully completed or is making progress with counseling.

24    (c) Subdivisions (a) and (b) shall apply to the following court  
25    orders:

26    (1) An order enjoining any party from molesting, attacking,  
27    striking, threatening, sexually assaulting, battering, harassing,  
28    contacting repeatedly by mail with the intent to harass, or  
29    disturbing the peace of the other party, or other named family and  
30    household members.

31    (2) An order excluding one party from the family dwelling or  
32    from the dwelling of the other.

33    (3) An order enjoining a party from specified behavior which  
34    the court determined was necessary to effectuate the order under  
35    subdivision (a).

36    (d) A subsequent conviction for a violation of an order described  
37    in subdivision (a), occurring within seven years of a prior  
38    conviction for a violation of an order described in subdivision (a)  
39    and involving an act of violence or “a credible threat” of violence,  
40    as defined in subdivision (c) of Section 139, is punishable by



1 imprisonment in a county jail not to exceed one year, or in the  
2 state prison.

3 (e) In the event of a subsequent conviction for a violation of an  
4 order described in subdivision (a) for an act occurring within one  
5 year of a prior conviction for a violation of an order described in  
6 subdivision (a) which results in physical injury to the same victim,  
7 the person shall be punished by a fine of not more than two  
8 thousand dollars (\$2,000), or by imprisonment in a county jail for  
9 not less than six months nor more than one year, by both that fine  
10 and imprisonment, or by imprisonment in the state prison.  
11 However, if the person is imprisoned in a county jail for at least  
12 30 days, the court may, in the interests of justice and for reasons  
13 stated in the record, reduce or eliminate the six-month minimum  
14 imprisonment required by this subdivision. In determining whether  
15 to reduce or eliminate the minimum imprisonment pursuant to this  
16 subdivision, the court shall consider the seriousness of the facts  
17 before the court, whether there are additional allegations of a  
18 violation of the order during the pendency of the case before the  
19 court, the probability of future violations, the safety of the victim,  
20 and whether the defendant has successfully completed or is making  
21 progress with counseling.

22 (f) The prosecuting agency of each county shall have the primary  
23 responsibility for the enforcement of orders issued pursuant to  
24 subdivisions (a), (b), (d), and (e).

25 (g) The court may order a person convicted under this section  
26 to undergo counseling, and, if appropriate, to complete a batterer's  
27 treatment program.

28 (h) If probation is granted upon conviction of a violation of  
29 subdivision (a), (b), or (c), the conditions of probation may include,  
30 in lieu of a fine, one or both of the following requirements:

31 (1) That the defendant make payments to a battered women's  
32 shelter, up to a maximum of five thousand dollars (\$5,000),  
33 pursuant to Section 1203.097.

34 (2) That the defendant reimburse the victim for reasonable costs  
35 of counseling and other reasonable expenses that the court finds  
36 are the direct result of the defendant's offense.

37 (i) For any order to pay a fine, make payments to a battered  
38 women's shelter, or pay restitution as a condition of probation  
39 under subdivision (e), the court shall make a determination of the  
40 defendant's ability to pay. In no event shall any order to make

1 payments to a battered women's shelter be made if it would impair  
2 the ability of the defendant to pay direct restitution to the victim  
3 or court ordered child support.

4 *(j) Alternatively, on or after the operative date of an applicable*  
5 *rule or rules proposed by the California Public Safety Commission,*  
6 *a person who violates this section shall be punished as provided*  
7 *in the applicable sentencing rules.*

8 *SEC. 163. Section 278 of the Penal Code is amended to read:*

9 278. (a) Every person, ~~not having~~ *who does not have* a right  
10 to custody, who maliciously takes, entices away, keeps, withholds,  
11 or conceals any child with the intent to detain or conceal that child  
12 from a lawful custodian shall be punished by imprisonment in a  
13 county jail not exceeding one year, a fine not exceeding one  
14 thousand dollars (\$1,000), or both that fine and imprisonment, or  
15 by imprisonment in the state prison for two, three, or four years,  
16 a fine not exceeding ten thousand dollars (\$10,000), or both that  
17 fine and imprisonment.

18 *(b) Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 *SEC. 164. Section 278.5 of the Penal Code is amended to read:*

23 278.5. (a) Every person who takes, entices away, keeps,  
24 withholds, or conceals a child and maliciously deprives a lawful  
25 custodian of a right to custody, or a person of a right to visitation,  
26 shall be punished by imprisonment in a county jail not exceeding  
27 one year, a fine not exceeding one thousand dollars (\$1,000), or  
28 both that fine and imprisonment, or by imprisonment in the state  
29 prison for 16 months, or two or three years, a fine not exceeding  
30 ten thousand dollars (\$10,000), or both that fine and imprisonment.

31 *(b) Alternatively, on or after the operative date of an applicable*  
32 *rule or rules proposed by the California Public Safety Commission,*  
33 *a person who violates this section shall be punished as provided*  
34 *in the applicable sentencing rules.*

35 ~~(b)~~

36 *(c) Nothing contained in this section limits the court's contempt*  
37 *power.*

38 ~~(e)~~

1 (d) A custody order obtained after the taking, enticing away,  
2 keeping, withholding, or concealing of a child does not constitute  
3 a defense to a crime charged under this section.

4 *SEC. 165. Section 280 of the Penal Code is amended to read:*

5 280. Every person who willfully causes or permits the removal  
6 or concealment of any child in violation of Section 8713, 8803, or  
7 8910 of the Family Code shall be punished as follows:

8 (a) By imprisonment in a county jail for not more than one year  
9 if the child is concealed within the county in which the adoption  
10 proceeding is pending or in which the child has been placed for  
11 adoption, or is removed from that county to a place within this  
12 state.

13 (b) By imprisonment in the state prison, or by imprisonment in  
14 a county jail for not more than one year, if the child is removed  
15 from that county to a place outside of this state.

16 (c) *Alternatively, on or after the operative date of an applicable*  
17 *rule or rules proposed by the California Public Safety Commission,*  
18 *as provided in the applicable sentencing rules.*

19 *SEC. 166. Section 285 of the Penal Code is amended to read:*

20 285. (a) Persons being within the degrees of consanguinity  
21 within which marriages are declared by law to be incestuous and  
22 void, who intermarry with each other, or who being 14 years of  
23 age or older, commit fornication or adultery with each other, are  
24 punishable by imprisonment in the state prison.

25 (b) *Alternatively, on or after the operative date of an applicable*  
26 *rule or rules proposed by the California Public Safety Commission,*  
27 *a person who violates this section shall be punished as provided*  
28 *in the applicable sentencing rules.*

29 *SEC. 167. Section 286 of the Penal Code is amended to read:*

30 286. (a) Sodomy is sexual conduct consisting of contact  
31 between the penis of one person and the anus of another person.  
32 Any sexual penetration, however slight, is sufficient to complete  
33 the crime of sodomy.

34 (b) (1) Except as provided in Section 288, any person who  
35 participates in an act of sodomy with another person who is under  
36 18 years of age shall be punished by imprisonment in the state  
37 prison, or in a county jail for not more than one year.

38 (2) Except as provided in Section 288, any person over the age  
39 of 21 years who participates in an act of sodomy with another  
40 person who is under 16 years of age shall be guilty of a felony.

1 (c) (1) Any person who participates in an act of sodomy with  
2 another person who is under 14 years of age and more than 10  
3 years younger than he or she shall be punished by imprisonment  
4 in the state prison for three, six, or eight years.

5 (2) Any person who commits an act of sodomy when the act is  
6 accomplished against the victim's will by means of force, violence,  
7 duress, menace, or fear of immediate and unlawful bodily injury  
8 on the victim or another person shall be punished by imprisonment  
9 in the state prison for three, six, or eight years.

10 (3) Any person who commits an act of sodomy where the act  
11 is accomplished against the victim's will by threatening to retaliate  
12 in the future against the victim or any other person, and there is a  
13 reasonable possibility that the perpetrator will execute the threat,  
14 shall be punished by imprisonment in the state prison for three,  
15 six, or eight years.

16 (d) Any person who, while voluntarily acting in concert with  
17 another person, either personally or aiding and abetting that other  
18 person, commits an act of sodomy when the act is accomplished  
19 against the victim's will by means of force or fear of immediate  
20 and unlawful bodily injury on the victim or another person or  
21 where the act is accomplished against the victim's will by  
22 threatening to retaliate in the future against the victim or any other  
23 person, and there is a reasonable possibility that the perpetrator  
24 will execute the threat, shall be punished by imprisonment in the  
25 state prison for five, seven, or nine years.

26 (e) Any person who participates in an act of sodomy with any  
27 person of any age while confined in any state prison, as defined  
28 in Section 4504, or in any local detention facility, as defined in  
29 Section 6031.4, shall be punished by imprisonment in the state  
30 prison, or in a county jail for not more than one year.

31 (f) Any person who commits an act of sodomy, and the victim  
32 is at the time unconscious of the nature of the act and this is known  
33 to the person committing the act, shall be punished by  
34 imprisonment in the state prison for three, six, or eight years. As  
35 used in this subdivision, "unconscious of the nature of the act"  
36 means incapable of resisting because the victim meets one of the  
37 following conditions:

38 (1) Was unconscious or asleep.

39 (2) Was not aware, knowing, perceiving, or cognizant that the  
40 act occurred.

1 (3) Was not aware, knowing, perceiving, or cognizant of the  
2 essential characteristics of the act due to the perpetrator's fraud in  
3 fact.

4 (4) Was not aware, knowing, perceiving, or cognizant of the  
5 essential characteristics of the act due to the perpetrator's fraudulent  
6 representation that the sexual penetration served a professional  
7 purpose when it served no professional purpose.

8 (g) Except as provided in subdivision (h), a person who commits  
9 an act of sodomy, and the victim is at the time incapable, because  
10 of a mental disorder or developmental or physical disability, of  
11 giving legal consent, and this is known or reasonably should be  
12 known to the person committing the act, shall be punished by  
13 imprisonment in the state prison for three, six, or eight years.  
14 Notwithstanding the existence of a conservatorship pursuant to  
15 the Lanterman-Petris-Short Act (Part 1 (commencing with Section  
16 5000) of Division 5 of the Welfare and Institutions Code), the  
17 prosecuting attorney shall prove, as an element of the crime, that  
18 a mental disorder or developmental or physical disability rendered  
19 the alleged victim incapable of giving consent.

20 (h) Any person who commits an act of sodomy, and the victim  
21 is at the time incapable, because of a mental disorder or  
22 developmental or physical disability, of giving legal consent, and  
23 this is known or reasonably should be known to the person  
24 committing the act, and both the defendant and the victim are at  
25 the time confined in a state hospital for the care and treatment of  
26 the mentally disordered or in any other public or private facility  
27 for the care and treatment of the mentally disordered approved by  
28 a county mental health director, shall be punished by imprisonment  
29 in the state prison, or in a county jail for not more than one year.  
30 Notwithstanding the existence of a conservatorship pursuant to  
31 the Lanterman-Petris-Short Act (Part 1 (commencing with Section  
32 5000) of Division 5 of the Welfare and Institutions Code), the  
33 prosecuting attorney shall prove, as an element of the crime, that  
34 a mental disorder or developmental or physical disability rendered  
35 the alleged victim incapable of giving legal consent.

36 (i) Any person who commits an act of sodomy, where the victim  
37 is prevented from resisting by an intoxicating or anesthetic  
38 substance, or any controlled substance, and this condition was  
39 known, or reasonably should have been known by the accused,

1 shall be punished by imprisonment in the state prison for three,  
2 six, or eight years.

3 (j) Any person who commits an act of sodomy, where the victim  
4 submits under the belief that the person committing the act is the  
5 victim's spouse, and this belief is induced by any artifice, pretense,  
6 or concealment practiced by the accused, with intent to induce the  
7 belief, shall be punished by imprisonment in the state prison for  
8 three, six, or eight years.

9 (k) Any person who commits an act of sodomy, where the act  
10 is accomplished against the victim's will by threatening to use the  
11 authority of a public official to incarcerate, arrest, or deport the  
12 victim or another, and the victim has a reasonable belief that the  
13 perpetrator is a public official, shall be punished by imprisonment  
14 in the state prison for three, six, or eight years.

15 As used in this subdivision, "public official" means a person  
16 employed by a governmental agency who has the authority, as part  
17 of that position, to incarcerate, arrest, or deport another. The  
18 perpetrator does not actually have to be a public official.

19 (l) As used in subdivisions (c) and (d), "threatening to retaliate"  
20 means a threat to kidnap or falsely imprison, or inflict extreme  
21 pain, serious bodily injury, or death.

22 (m) In addition to any punishment imposed under this section,  
23 the judge may assess a fine not to exceed seventy dollars (\$70)  
24 against any person who violates this section, with the proceeds of  
25 this fine to be used in accordance with Section 1463.23. The court,  
26 however, shall take into consideration the defendant's ability to  
27 pay, and no defendant shall be denied probation because of his or  
28 her inability to pay the fine permitted under this subdivision.

29 (n) *Alternatively, on or after the operative date of an applicable*  
30 *rule or rules proposed by the California Public Safety Commission,*  
31 *a person who violates this section shall be punished as provided*  
32 *in the applicable sentencing rules.*

33 *SEC. 168. Section 286.5 of the Penal Code is amended to read:*

34 286.5. Any person who sexually assaults any animal protected  
35 by Section 597f for the purpose of arousing or gratifying the sexual  
36 desire of the person is guilty of a misdemeanor *or, on or after the*  
37 *operative date of an applicable rule or rules proposed by the*  
38 *California Public Safety Commission, shall be punished as*  
39 *provided in the applicable sentencing rules.*

40 *SEC. 169. Section 288 of the Penal Code is amended to read:*

288. (a) Any person who willfully and lewdly commits any lewd or lascivious act, including any of the acts constituting other crimes provided for in Part 1, upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(b) (1) Any person who commits an act described in subdivision (a) by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person, with the intent described in subdivision (a), is guilty of a felony and shall be punished by imprisonment in the state prison for three, six, or eight years.

(c) (1) Any person who commits an act described in subdivision (a) with the intent described in that subdivision, and the victim is a child of 14 or 15 years, and that person is at least 10 years older than the child, is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year. In determining whether the person is at least 10 years older than the child, the difference in age shall be measured from the birth date of the person to the birth date of the child.

(2) Any person who is a caretaker and commits an act described in subdivision (a) upon a dependent person, with the intent described in subdivision (a), is guilty of a public offense and shall be punished by imprisonment in the state prison for one, two, or three years, or by imprisonment in a county jail for not more than one year.

*(d) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~

(e) In any arrest or prosecution under this section or Section 288.5, the peace officer, district attorney, and the court shall consider the needs of the child victim or dependent person and shall do whatever is necessary, within existing budgetary resources, and constitutionally permissible to prevent psychological harm to the child victim or to prevent psychological harm to the dependent person victim resulting from participation in the court process.

(e)

(f) Upon the conviction of any person for a violation of subdivision (a) or (b), the court may, in addition to any other penalty or fine imposed, order the defendant to pay an additional fine not to exceed ten thousand dollars (\$10,000). In setting the amount of the fine, the court shall consider any relevant factors, including, but not limited to, the seriousness and gravity of the offense, the circumstances of its commission, whether the defendant derived any economic gain as a result of the crime, and the extent to which the victim suffered economic losses as a result of the crime. Every fine imposed and collected under this section shall be deposited in the Victim-Witness Assistance Fund to be available for appropriation to fund child sexual exploitation and child sexual abuse victim counseling centers and prevention programs pursuant to Section 13837.

If the court orders a fine imposed pursuant to this subdivision, the actual administrative cost of collecting that fine, not to exceed 2 percent of the total amount paid, may be paid into the general fund of the county treasury for the use and benefit of the county.

(f)

(g) For purposes of paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c), the following definitions apply:

(1) “Caretaker” means an owner, operator, administrator, employee, independent contractor, agent, or volunteer of any of the following public or private facilities when the facilities provide care for elder or dependent persons:

(A) Twenty-four hour health facilities, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

(B) Clinics.

(C) Home health agencies.

(D) Adult day health care centers.



1 (E) Secondary schools that serve dependent persons and  
2 postsecondary educational institutions that serve dependent persons  
3 or elders.

4 (F) Sheltered workshops.

5 (G) Camps.

6 (H) Community care facilities, as defined by Section 1402 of  
7 the Health and Safety Code, and residential care facilities for the  
8 elderly, as defined in Section 1569.2 of the Health and Safety  
9 Code.

10 (I) Respite care facilities.

11 (J) Foster homes.

12 (K) Regional centers for persons with developmental disabilities.

13 (L) A home health agency licensed in accordance with Chapter  
14 8 (commencing with Section 1725) of Division 2 of the Health  
15 and Safety Code.

16 (M) An agency that supplies in-home supportive services.

17 (N) Board and care facilities.

18 (O) Any other protective or public assistance agency that  
19 provides health services or social services to elder or dependent  
20 persons, including, but not limited to, in-home supportive services,  
21 as defined in Section 14005.14 of the Welfare and Institutions  
22 Code.

23 (P) Private residences.

24 (2) "Board and care facilities" means licensed or unlicensed  
25 facilities that provide assistance with one or more of the following  
26 activities:

27 (A) Bathing.

28 (B) Dressing.

29 (C) Grooming.

30 (D) Medication storage.

31 (E) Medical dispensation.

32 (F) Money management.

33 (3) "Dependent person" means any person who has a physical  
34 or mental impairment that substantially restricts his or her ability  
35 to carry out normal activities or to protect his or her rights,  
36 including, but not limited to, persons who have physical or  
37 developmental disabilities or whose physical or mental abilities  
38 have significantly diminished because of age. "Dependent person"  
39 includes any person who is admitted as an inpatient to a 24-hour

1 health facility, as defined in Sections 1250, 1250.2, and 1250.3 of  
2 the Health and Safety Code.

3 ~~(g)~~

4 (h) Paragraph (2) of subdivision (b) and paragraph (2) of  
5 subdivision (c) apply to the owners, operators, administrators,  
6 employees, independent contractors, agents, or volunteers working  
7 at these public or private facilities and only to the extent that the  
8 individuals personally commit, conspire, aid, abet, or facilitate any  
9 act prohibited by paragraph (2) of subdivision (b) and paragraph  
10 (2) of subdivision (c).

11 ~~(h)~~

12 (i) Paragraph (2) of subdivision (b) and paragraph (2) of  
13 subdivision (c) do not apply to a caretaker who is a spouse of, or  
14 who is in an equivalent domestic relationship with, the dependent  
15 person under care.

16 *SEC. 170. Section 288a of the Penal Code is amended to read:*

17 288a. (a) Oral copulation is the act of copulating the mouth  
18 of one person with the sexual organ or anus of another person.

19 (b) (1) Except as provided in Section 288, any person who  
20 participates in an act of oral copulation with another person who  
21 is under 18 years of age shall be punished by imprisonment in the  
22 state prison, or in a county jail for a period of not more than one  
23 year.

24 (2) Except as provided in Section 288, any person over the age  
25 of 21 years who participates in an act of oral copulation with  
26 another person who is under 16 years of age is guilty of a felony.

27 (c) (1) Any person who participates in an act of oral copulation  
28 with another person who is under 14 years of age and more than  
29 10 years younger than he or she shall be punished by imprisonment  
30 in the state prison for three, six, or eight years.

31 (2) Any person who commits an act of oral copulation when  
32 the act is accomplished against the victim's will by means of force,  
33 violence, duress, menace, or fear of immediate and unlawful bodily  
34 injury on the victim or another person shall be punished by  
35 imprisonment in the state prison for three, six, or eight years.

36 (3) Any person who commits an act of oral copulation where  
37 the act is accomplished against the victim's will by threatening to  
38 retaliate in the future against the victim or any other person, and  
39 there is a reasonable possibility that the perpetrator will execute

1 the threat, shall be punished by imprisonment in the state prison  
2 for three, six, or eight years.

3 (d) Any person who, while voluntarily acting in concert with  
4 another person, either personally or by aiding and abetting that  
5 other person, commits an act of oral copulation (1) when the act  
6 is accomplished against the victim's will by means of force or fear  
7 of immediate and unlawful bodily injury on the victim or another  
8 person, or (2) where the act is accomplished against the victim's  
9 will by threatening to retaliate in the future against the victim or  
10 any other person, and there is a reasonable possibility that the  
11 perpetrator will execute the threat, or (3) where the victim is at the  
12 time incapable, because of a mental disorder or developmental or  
13 physical disability, of giving legal consent, and this is known or  
14 reasonably should be known to the person committing the act,  
15 shall be punished by imprisonment in the state prison for five,  
16 seven, or nine years. Notwithstanding the appointment of a  
17 conservator with respect to the victim pursuant to the provisions  
18 of the Lanterman-Petris-Short Act (Part 1 (commencing with  
19 Section 5000) of Division 5 of the Welfare and Institutions Code),  
20 the prosecuting attorney shall prove, as an element of the crime  
21 described under paragraph (3), that a mental disorder or  
22 developmental or physical disability rendered the alleged victim  
23 incapable of giving legal consent.

24 (e) Any person who participates in an act of oral copulation  
25 while confined in any state prison, as defined in Section 4504 or  
26 in any local detention facility as defined in Section 6031.4, shall  
27 be punished by imprisonment in the state prison, or in a county  
28 jail for a period of not more than one year.

29 (f) Any person who commits an act of oral copulation, and the  
30 victim is at the time unconscious of the nature of the act and this  
31 is known to the person committing the act, shall be punished by  
32 imprisonment in the state prison for a period of three, six, or eight  
33 years. As used in this subdivision, "unconscious of the nature of  
34 the act" means incapable of resisting because the victim meets one  
35 of the following conditions:

36 (1) Was unconscious or asleep.

37 (2) Was not aware, knowing, perceiving, or cognizant that the  
38 act occurred.

1 (3) Was not aware, knowing, perceiving, or cognizant of the  
2 essential characteristics of the act due to the perpetrator's fraud in  
3 fact.

4 (4) Was not aware, knowing, perceiving, or cognizant of the  
5 essential characteristics of the act due to the perpetrator's fraudulent  
6 representation that the oral copulation served a professional purpose  
7 when it served no professional purpose.

8 (g) Except as provided in subdivision (h), any person who  
9 commits an act of oral copulation, and the victim is at the time  
10 incapable, because of a mental disorder or developmental or  
11 physical disability, of giving legal consent, and this is known or  
12 reasonably should be known to the person committing the act,  
13 shall be punished by imprisonment in the state prison, for three,  
14 six, or eight years. Notwithstanding the existence of a  
15 conservatorship pursuant to the provisions of the  
16 Lanterman-Petris-Short Act (Part 1 (commencing with Section  
17 5000) of Division 5 of the Welfare and Institutions Code), the  
18 prosecuting attorney shall prove, as an element of the crime, that  
19 a mental disorder or developmental or physical disability rendered  
20 the alleged victim incapable of giving consent.

21 (h) Any person who commits an act of oral copulation, and the  
22 victim is at the time incapable, because of a mental disorder or  
23 developmental or physical disability, of giving legal consent, and  
24 this is known or reasonably should be known to the person  
25 committing the act, and both the defendant and the victim are at  
26 the time confined in a state hospital for the care and treatment of  
27 the mentally disordered or in any other public or private facility  
28 for the care and treatment of the mentally disordered approved by  
29 a county mental health director, shall be punished by imprisonment  
30 in the state prison, or in a county jail for a period of not more than  
31 one year. Notwithstanding the existence of a conservatorship  
32 pursuant to the provisions of the Lanterman-Petris-Short Act (Part  
33 1 (commencing with Section 5000) of Division 5 of the Welfare  
34 and Institutions Code), the prosecuting attorney shall prove, as an  
35 element of the crime, that a mental disorder or developmental or  
36 physical disability rendered the alleged victim incapable of giving  
37 legal consent.

38 (i) Any person who commits an act of oral copulation, where  
39 the victim is prevented from resisting by any intoxicating or  
40 anesthetic substance, or any controlled substance, and this condition

1 was known, or reasonably should have been known by the accused,  
2 shall be punished by imprisonment in the state prison for a period  
3 of three, six, or eight years.

4 (j) Any person who commits an act of oral copulation, where  
5 the victim submits under the belief that the person committing the  
6 act is the victim's spouse, and this belief is induced by any artifice,  
7 pretense, or concealment practiced by the accused, with intent to  
8 induce the belief, shall be punished by imprisonment in the state  
9 prison for a period of three, six, or eight years.

10 (k) Any person who commits an act of oral copulation, where  
11 the act is accomplished against the victim's will by threatening to  
12 use the authority of a public official to incarcerate, arrest, or deport  
13 the victim or another, and the victim has a reasonable belief that  
14 the perpetrator is a public official, shall be punished by  
15 imprisonment in the state prison for a period of three, six, or eight  
16 years.

17 As used in this subdivision, "public official" means a person  
18 employed by a governmental agency who has the authority, as part  
19 of that position, to incarcerate, arrest, or deport another. The  
20 perpetrator does not actually have to be a public official.

21 *(l) Alternatively, on or after the operative date of an applicable*  
22 *rule or rules proposed by the California Public Safety Commission,*  
23 *a person who violates this section shall be punished as provided*  
24 *in the applicable sentencing rules.*

25 ~~(t)~~

26 (m) As used in subdivisions (c) and (d), "threatening to retaliate"  
27 means a threat to kidnap or falsely imprison, or to inflict extreme  
28 pain, serious bodily injury, or death.

29 ~~(m)~~

30 (n) In addition to any punishment imposed under this section,  
31 the judge may assess a fine not to exceed seventy dollars (\$70)  
32 against any person who violates this section, with the proceeds of  
33 this fine to be used in accordance with Section 1463.23. The court  
34 shall, however, take into consideration the defendant's ability to  
35 pay, and no defendant shall be denied probation because of his or  
36 her inability to pay the fine permitted under this subdivision.

37 *SEC. 171. Section 288.2 of the Penal Code is amended to read:*

38 288.2. (a) Every person who, with knowledge that a person is  
39 a minor, or who fails to exercise reasonable care in ascertaining  
40 the true age of a minor, knowingly distributes, sends, causes to be

1 sent, exhibits, or offers to distribute or exhibit by any means,  
2 including, but not limited to, live or recorded telephone messages,  
3 any harmful matter, as defined in Section 313, to a minor with the  
4 intent of arousing, appealing to, or gratifying the lust or passions  
5 or sexual desires of that person or of a minor, and with the intent  
6 or for the purpose of seducing a minor, is guilty of a public offense  
7 and shall be punished by imprisonment in the state prison or in a  
8 county jail.

9 A person convicted of a second and any subsequent conviction  
10 for a violation of this section is guilty of a felony.

11 (b) Every person who, with knowledge that a person is a minor,  
12 knowingly distributes, sends, causes to be sent, exhibits, or offers  
13 to distribute or exhibit by electronic mail, the Internet, as defined  
14 in Section 17538 of the Business and Professions Code, or a  
15 commercial online service, any harmful matter, as defined in  
16 Section 313, to a minor with the intent of arousing, appealing to,  
17 or gratifying the lust or passions or sexual desires of that person  
18 or of a minor, and with the intent, or for the purpose of seducing  
19 a minor, is guilty of a public offense and shall be punished by  
20 imprisonment in the state prison or in a county jail.

21 A person convicted of a second and any subsequent conviction  
22 for a violation of this section is guilty of a felony.

23 (c) *Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who violates this section shall be punished as provided*  
26 *in the applicable sentencing rules.*

27 ~~(e)~~

28 (d) It shall be a defense to any prosecution under this section  
29 that a parent or guardian committed the act charged in aid of  
30 legitimate sex education.

31 ~~(d)~~

32 (e) It shall be a defense in any prosecution under this section  
33 that the act charged was committed in aid of legitimate scientific  
34 or educational purposes.

35 ~~(e)~~

36 (f) It does not constitute a violation of this section for a telephone  
37 corporation, as defined in Section 234 of the Public Utilities Code,  
38 a cable television company franchised pursuant to Section 53066  
39 of the Government Code, or any of its affiliates, an Internet service  
40 provider, or commercial online service provider, to carry,

1 broadcast, or transmit messages described in this section or perform  
2 related activities in providing telephone, cable television, Internet,  
3 or commercial online services.

4 *SEC. 172. Section 288.4 of the Penal Code is amended to read:*

5 288.4. (a) (1) Every person who, motivated by an unnatural  
6 or abnormal sexual interest in children, arranges a meeting with a  
7 minor or a person he or she believes to be a minor for the purpose  
8 of exposing his or her genitals or pubic or rectal area, having the  
9 child expose his or her genitals or pubic or rectal area, or engaging  
10 in lewd or lascivious behavior, shall be punished by a fine not  
11 exceeding five thousand dollars (\$5,000), by imprisonment in a  
12 county jail not exceeding one year, or by both the fine and  
13 imprisonment.

14 (2) Every person who violates this subdivision after a prior  
15 conviction for an offense listed in subdivision (c) of Section 290  
16 shall be punished by imprisonment in the state prison.

17 (b) Every person described in paragraph (1) of subdivision (a)  
18 who goes to the arranged meeting place at or about the arranged  
19 time, shall be punished by imprisonment in the state prison for  
20 two, three, or four years.

21 (c) *Alternatively, on or after the operative date of an applicable*  
22 *rule or rules proposed by the California Public Safety Commission,*  
23 *a person who violates this section shall be punished as provided*  
24 *in the applicable sentencing rules.*

25 (e)

26 (d) Nothing in this section shall preclude or prohibit prosecution  
27 under any other provision of law.

28 *SEC. 173. Section 288.5 of the Penal Code is amended to read:*

29 288.5. (a) Any person who either resides in the same home  
30 with the minor child or has recurring access to the child, who over  
31 a period of time, not less than three months in duration, engages  
32 in three or more acts of substantial sexual conduct with a child  
33 under the age of 14 years at the time of the commission of the  
34 offense, as defined in subdivision (b) of Section 1203.066, or three  
35 or more acts of lewd or lascivious conduct, as defined in Section  
36 288, with a child under the age of 14 years at the time of the  
37 commission of the offense is guilty of the offense of continuous  
38 sexual abuse of a child and shall be punished by imprisonment in  
39 the state prison for a term of 6, 12, or 16 years.

1 (b) To convict under this section the trier of fact, if a jury, need  
2 unanimously agree only that the requisite number of acts occurred  
3 not on which acts constitute the requisite number.

4 (c) No other act of substantial sexual conduct, as defined in  
5 subdivision (b) of Section 1203.066, with a child under 14 years  
6 of age at the time of the commission of the offenses, or lewd and  
7 lascivious acts, as defined in Section 288, involving the same  
8 victim may be charged in the same proceeding with a charge under  
9 this section unless the other charged offense occurred outside the  
10 time period charged under this section or the other offense is  
11 charged in the alternative. A defendant may be charged with only  
12 one count under this section unless more than one victim is  
13 involved in which case a separate count may be charged for each  
14 victim.

15 (d) *Alternatively, on or after the operative date of an applicable*  
16 *rule or rules proposed by the California Public Safety Commission,*  
17 *a person who violates this section shall be punished as provided*  
18 *in the applicable sentencing rules.*

19 SEC. 174. Section 288.7 of the Penal Code is amended to read:

20 288.7. (a) Any person 18 years of age or older who engages  
21 in sexual intercourse or sodomy with a child who is 10 years of  
22 age or younger is guilty of a felony and shall be punished by  
23 imprisonment in the state prison for a term of 25 years to life.

24 (b) Any person 18 years of age or older who engages in oral  
25 copulation or sexual penetration, as defined in Section 289, with  
26 a child who is 10 years of age or younger is guilty of a felony and  
27 shall be punished by imprisonment in the state prison for a term  
28 of 15 years to life.

29 (c) *Alternatively, on or after the operative date of an applicable*  
30 *rule or rules proposed by the California Public Safety Commission,*  
31 *a person who violates this section shall be punished as provided*  
32 *in the applicable sentencing rules.*

33 SEC. 175. Section 289 of the Penal Code is amended to read:

34 289. (a) (1) Any person who commits an act of sexual  
35 penetration when the act is accomplished against the victim's will  
36 by means of force, violence, duress, menace, or fear of immediate  
37 and unlawful bodily injury on the victim or another person shall  
38 be punished by imprisonment in the state prison for three, six, or  
39 eight years.



1 (2) Any person who commits an act of sexual penetration when  
2 the act is accomplished against the victim's will by threatening to  
3 retaliate in the future against the victim or any other person, and  
4 there is a reasonable possibility that the perpetrator will execute  
5 the threat, shall be punished by imprisonment in the state prison  
6 for three, six, or eight years.

7 (b) Except as provided in subdivision (c), any person who  
8 commits an act of sexual penetration, and the victim is at the time  
9 incapable, because of a mental disorder or developmental or  
10 physical disability, of giving legal consent, and this is known or  
11 reasonably should be known to the person committing the act or  
12 causing the act to be committed, shall be punished by imprisonment  
13 in the state prison for three, six, or eight years. Notwithstanding  
14 the appointment of a conservator with respect to the victim pursuant  
15 to the provisions of the Lanterman-Petris-Short Act (Part 1  
16 (commencing with Section 5000) of Division 5 of the Welfare and  
17 Institutions Code), the prosecuting attorney shall prove, as an  
18 element of the crime, that a mental disorder or developmental or  
19 physical disability rendered the alleged victim incapable of giving  
20 legal consent.

21 (c) Any person who commits an act of sexual penetration, and  
22 the victim is at the time incapable, because of a mental disorder  
23 or developmental or physical disability, of giving legal consent,  
24 and this is known or reasonably should be known to the person  
25 committing the act or causing the act to be committed and both  
26 the defendant and the victim are at the time confined in a state  
27 hospital for the care and treatment of the mentally disordered or  
28 in any other public or private facility for the care and treatment of  
29 the mentally disordered approved by a county mental health  
30 director, shall be punished by imprisonment in the state prison, or  
31 in a county jail for a period of not more than one year.  
32 Notwithstanding the existence of a conservatorship pursuant to  
33 the provisions of the Lanterman-Petris-Short Act (Part 1  
34 (commencing with Section 5000) of Division 5 of the Welfare and  
35 Institutions Code), the prosecuting attorney shall prove, as an  
36 element of the crime, that a mental disorder or developmental or  
37 physical disability rendered the alleged victim incapable of giving  
38 legal consent.

39 (d) Any person who commits an act of sexual penetration, and  
40 the victim is at the time unconscious of the nature of the act and

1 this is known to the person committing the act or causing the act  
2 to be committed, shall be punished by imprisonment in the state  
3 prison for three, six, or eight years. As used in this subdivision,  
4 “unconscious of the nature of the act” means incapable of resisting  
5 because the victim meets one of the following conditions:

6 (1) Was unconscious or asleep.

7 (2) Was not aware, knowing, perceiving, or cognizant that the  
8 act occurred.

9 (3) Was not aware, knowing, perceiving, or cognizant of the  
10 essential characteristics of the act due to the perpetrator’s fraud in  
11 fact.

12 (4) Was not aware, knowing, perceiving, or cognizant of the  
13 essential characteristics of the act due to the perpetrator’s fraudulent  
14 representation that the sexual penetration served a professional  
15 purpose when it served no professional purpose.

16 (e) Any person who commits an act of sexual penetration when  
17 the victim is prevented from resisting by any intoxicating or  
18 anesthetic substance, or any controlled substance, and this condition  
19 was known, or reasonably should have been known by the accused,  
20 shall be punished by imprisonment in the state prison for a period  
21 of three, six, or eight years.

22 (f) Any person who commits an act of sexual penetration when  
23 the victim submits under the belief that the person committing the  
24 act or causing the act to be committed is the victim’s spouse, and  
25 this belief is induced by any artifice, pretense, or concealment  
26 practiced by the accused, with intent to induce the belief, shall be  
27 punished by imprisonment in the state prison for a period of three,  
28 six, or eight years.

29 (g) Any person who commits an act of sexual penetration when  
30 the act is accomplished against the victim’s will by threatening to  
31 use the authority of a public official to incarcerate, arrest, or deport  
32 the victim or another, and the victim has a reasonable belief that  
33 the perpetrator is a public official, shall be punished by  
34 imprisonment in the state prison for a period of three, six, or eight  
35 years.

36 As used in this subdivision, “public official” means a person  
37 employed by a governmental agency who has the authority, as part  
38 of that position, to incarcerate, arrest, or deport another. The  
39 perpetrator does not actually have to be a public official.

1 (h) Except as provided in Section 288, any person who  
2 participates in an act of sexual penetration with another person  
3 who is under 18 years of age shall be punished by imprisonment  
4 in the state prison or in the county jail for a period of not more  
5 than one year.

6 (i) Except as provided in Section 288, any person over the age  
7 of 21 years who participates in an act of sexual penetration with  
8 another person who is under 16 years of age shall be guilty of a  
9 felony.

10 (j) Any person who participates in an act of sexual penetration  
11 with another person who is under 14 years of age and who is more  
12 than 10 years younger than he or she shall be punished by  
13 imprisonment in the state prison for three, six, or eight years.

14 (k) *Alternatively, on or after the operative date of an applicable*  
15 *rule or rules proposed by the California Public Safety Commission,*  
16 *a person who violates this section shall be punished as provided*  
17 *in the applicable sentencing rules.*

18 ~~(k)~~

19 (l) As used in this section:

20 (1) “Sexual penetration” is the act of causing the penetration,  
21 however slight, of the genital or anal opening of any person or  
22 causing another person to so penetrate the defendant’s or another  
23 person’s genital or anal opening for the purpose of sexual arousal,  
24 gratification, or abuse by any foreign object, substance, instrument,  
25 or device, or by any unknown object.

26 (2) “Foreign object, substance, instrument, or device” shall  
27 include any part of the body, except a sexual organ.

28 (3) “Unknown object” shall include any foreign object,  
29 substance, instrument, or device, or any part of the body, including  
30 a penis, when it is not known whether penetration was by a penis  
31 or by a foreign object, substance, instrument, or device, or by any  
32 other part of the body.

33 ~~(t)~~

34 (m) As used in subdivision (a), “threatening to retaliate” means  
35 a threat to kidnap or falsely imprison, or inflict extreme pain,  
36 serious bodily injury or death.

37 ~~(m)~~

38 (n) As used in this section, “victim” includes any person who  
39 the defendant causes to penetrate the genital or anal opening of  
40 the defendant or another person or whose genital or anal opening

1 is caused to be penetrated by the defendant or another person and  
2 who otherwise qualifies as a victim under the requirements of this  
3 section.

4 *SEC. 176. Section 289.5 of the Penal Code is amended to read:*

5 289.5. (a) Every person who flees to this state with the intent  
6 to avoid prosecution for an offense which, if committed or  
7 attempted in this state, would have been punishable as one or more  
8 of the offenses described in subdivision (c) of Section 290, and  
9 who has been charged with that offense under the laws of the  
10 jurisdiction from which the person fled, is guilty of a misdemeanor.

11 (b) Every person who flees to this state with the intent to avoid  
12 custody or confinement imposed for conviction of an offense under  
13 the laws of the jurisdiction from which the person fled, which  
14 offense, if committed or attempted in this state, would have been  
15 punishable as one or more of the offenses described in subdivision  
16 (c) of Section 290, is guilty of a misdemeanor.

17 (c) No person shall be charged and prosecuted for an offense  
18 under this section unless the prosecutor has requested the other  
19 jurisdiction to extradite the person and the other jurisdiction has  
20 refused to do so.

21 (d) Any person who is convicted of any felony sex offense  
22 described in subdivision (c) of Section 290, that is committed after  
23 fleeing to this state under the circumstances described in  
24 subdivision (a) or (b) of this section, shall, in addition and  
25 consecutive to the punishment for that conviction, receive an  
26 additional term of two years' imprisonment.

27 (e) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 *SEC. 177. Section 289.6 of the Penal Code is amended to read:*

32 289.6. (a) (1) An employee or officer of a public entity health  
33 facility, or an employee, officer, or agent of a private person or  
34 entity that provides a health facility or staff for a health facility  
35 under contract with a public entity, who engages in sexual activity  
36 with a consenting adult who is confined in a health facility is guilty  
37 of a public offense. As used in this paragraph, "health facility"  
38 means a health facility as defined in subdivisions (b), (e), (g), (h),  
39 and (j), and subparagraph (C) of paragraph (2) of subdivision (i)

1 of Section 1250 of the Health and Safety Code, in which the victim  
2 has been confined involuntarily.

3 (2) An employee or officer of a public entity detention facility,  
4 or an employee, officer, or agent of a private person or entity that  
5 provides a detention facility or staff for a detention facility, or  
6 person or agent of a public or private entity under contract with a  
7 detention facility, or a volunteer of a private or public entity  
8 detention facility, who engages in sexual activity with a consenting  
9 adult who is confined in a detention facility, is guilty of a public  
10 offense.

11 (3) An employee with a department, board, or authority under  
12 ~~the Youth and Adult Correctional Agency~~ *the Department of*  
13 *Corrections and Rehabilitation* or a facility under contract with a  
14 ~~department, board, or authority under the Youth and Adult~~  
15 ~~Correctional Agency~~ *the department*, who, during the course of  
16 his or her employment directly provides treatment, care, control,  
17 or supervision of inmates, wards, or parolees, and who engages in  
18 sexual activity with a consenting adult who is an inmate, ward, or  
19 parolee, is guilty of a public offense.

20 (b) As used in this section, the term “public entity” means the  
21 state, federal government, a city, a county, a city and county, a  
22 joint county jail district, or any entity created as a result of a joint  
23 powers agreement between two or more public entities.

24 (c) As used in this section, the term “detention facility” means:

25 (1) A prison, jail, camp, or other correctional facility used for  
26 the confinement of adults or both adults and minors.

27 (2) A building or facility used for the confinement of adults or  
28 adults and minors pursuant to a contract with a public entity.

29 (3) A room that is used for holding persons for interviews,  
30 interrogations, or investigations and that is separate from a jail or  
31 located in the administrative area of a law enforcement facility.

32 (4) A vehicle used to transport confined persons during their  
33 period of confinement.

34 (5) A court holding facility located within or adjacent to a court  
35 building that is used for the confinement of persons for the purpose  
36 of court appearances.

37 (d) As used in this section, “sexual activity” means:

38 (1) Sexual intercourse.

39 (2) Sodomy, as defined in subdivision (a) of Section 286.

1 (3) Oral copulation, as defined in subdivision (a) of Section  
2 288a.

3 (4) Sexual penetration, as defined in subdivision (k) of Section  
4 289.

5 (5) The rubbing or touching of the breasts or sexual organs of  
6 another, or of oneself in the presence of and with knowledge of  
7 another, with the intent of arousing, appealing to, or gratifying the  
8 lust, passions, or sexual desires of oneself or another.

9 (e) Consent by a confined person or parolee to sexual activity  
10 proscribed by this section is not a defense to a criminal prosecution  
11 for violation of this section.

12 (f) This section does not apply to sexual activity between  
13 consenting adults that occurs during an overnight conjugal visit  
14 that takes place pursuant to a court order or with the written  
15 approval of an authorized representative of the public entity that  
16 operates or contracts for the operation of the detention facility  
17 where the conjugal visit takes place, to physical contact or  
18 penetration made pursuant to a lawful search, or bona fide medical  
19 examinations or treatments, including clinical treatments.

20 (g) Any violation of paragraph (1) of subdivision (a), or a  
21 violation of paragraph (2) or (3) of subdivision (a) as described in  
22 paragraph (5) of subdivision (d), is a misdemeanor.

23 (h) Any violation of paragraph (2) or (3) of subdivision (a), as  
24 described in paragraph (1), (2), (3), or (4) of subdivision (d), shall  
25 be punished by imprisonment in a county jail not exceeding one  
26 year, or in the state prison, or by a fine of not more than ten  
27 thousand dollars (\$10,000) or by both that fine and imprisonment.

28 (i) Any person previously convicted of a violation of this section  
29 shall, upon a subsequent violation, be guilty of a felony.

30 (j) *Alternatively, on or after the operative date of an applicable*  
31 *rule or rules proposed by the California Public Safety Commission,*  
32 *a person who violates this section shall be punished as provided*  
33 *in the applicable sentencing rules.*

34 (j)

35 (k) Anyone who is convicted of a felony violation of this section  
36 who is employed by a department, board, or authority within the  
37 ~~Youth and Adult Correctional Agency department~~ shall be  
38 terminated in accordance with the State Civil Service Act (Part 2  
39 (commencing with Section 18500) of Title 2 of Division 5 of the  
40 Government Code). Anyone who has been convicted of a felony

1 violation of this section shall not be eligible to be hired or reinstated  
2 by a department, board, or authority within the Youth and Adult  
3 Correctional Agency the department.

4 SEC. 178. Section 311.1 of the Penal Code is amended to read:

5 311.1. (a) Every person who knowingly sends or causes to be  
6 sent, or brings or causes to be brought, into this state for sale or  
7 distribution, or in this state possesses, prepares, publishes,  
8 produces, develops, duplicates, or prints any representation of  
9 information, data, or image, including, but not limited to, any film,  
10 filmstrip, photograph, negative, slide, photocopy, videotape, video  
11 laser disc, computer hardware, computer software, computer floppy  
12 disc, data storage media, CD-ROM, or computer-generated  
13 equipment or any other computer-generated image that contains  
14 or incorporates in any manner, any film or filmstrip, with intent  
15 to distribute or to exhibit to, or to exchange with, others, or who  
16 offers to distribute, distributes, or exhibits to, or exchanges with,  
17 others, any obscene matter, knowing that the matter depicts a  
18 person under the age of 18 years personally engaging in or  
19 personally simulating sexual conduct, as defined in Section 311.4,  
20 shall be punished either by imprisonment in the county jail for up  
21 to one year, by a fine not to exceed one thousand dollars (\$1,000),  
22 or by both the fine and imprisonment, or by imprisonment in the  
23 state prison, by a fine not to exceed ten thousand dollars (\$10,000),  
24 or by the fine and imprisonment.

25 (b) Alternatively, on or after the operative date of an applicable  
26 rule or rules proposed by the California Public Safety Commission,  
27 a person who violates this section shall be punished as provided  
28 in the applicable sentencing rules.

29 (b)

30 (c) This section does not apply to the activities of law  
31 enforcement and prosecuting agencies in the investigation and  
32 prosecution of criminal offenses or to legitimate medical, scientific,  
33 or educational activities, or to lawful conduct between spouses.

34 (e)

35 (d) This section does not apply to matter which depicts a child  
36 under the age of 18, which child is legally emancipated, including  
37 lawful conduct between spouses when one or both are under the  
38 age of 18.

39 (d)

1 (e) It does not constitute a violation of this section for a  
2 telephone corporation, as defined by Section 234 of the Public  
3 Utilities Code, to carry or transmit messages described in this  
4 chapter or perform related activities in providing telephone  
5 services.

6 *SEC. 179. Section 311.2 of the Penal Code is amended to read:*

7 311.2. (a) Every person who knowingly sends or causes to be  
8 sent, or brings or causes to be brought, into this state for sale or  
9 distribution, or in this state possesses, prepares, publishes,  
10 produces, or prints, with intent to distribute or to exhibit to others,  
11 or who offers to distribute, distributes, or exhibits to others, any  
12 obscene matter is for a first offense, guilty of a misdemeanor. If  
13 the person has previously been convicted of any violation of this  
14 section, the court may, in addition to the punishment authorized  
15 in Section 311.9, impose a fine not exceeding fifty thousand dollars  
16 (\$50,000).

17 (b) Every person who knowingly sends or causes to be sent, or  
18 brings or causes to be brought, into this state for sale or distribution,  
19 or in this state possesses, prepares, publishes, produces, develops,  
20 duplicates, or prints any representation of information, data, or  
21 image, including, but not limited to, any film, filmstrip, photograph,  
22 negative, slide, photocopy, videotape, video laser disc, computer  
23 hardware, computer software, computer floppy disc, data storage  
24 media, CD-ROM, or computer-generated equipment or any other  
25 computer-generated image that contains or incorporates in any  
26 manner, any film or filmstrip, with intent to distribute or to exhibit  
27 to, or to exchange with, others for commercial consideration, or  
28 who offers to distribute, distributes, or exhibits to, or exchanges  
29 with, others for commercial consideration, any obscene matter,  
30 knowing that the matter depicts a person under the age of 18 years  
31 personally engaging in or personally simulating sexual conduct,  
32 as defined in Section 311.4, is guilty of a felony and shall be  
33 punished by imprisonment in the state prison for two, three, or six  
34 years, or by a fine not exceeding one hundred thousand dollars  
35 (\$100,000), in the absence of a finding that the defendant would  
36 be incapable of paying that fine, or by both that fine and  
37 imprisonment.

38 (c) Every person who knowingly sends or causes to be sent, or  
39 brings or causes to be brought, into this state for sale or distribution,  
40 or in this state possesses, prepares, publishes, produces, develops,



1 duplicates, or prints any representation of information, data, or  
2 image, including, but not limited to, any film, filmstrip, photograph,  
3 negative, slide, photocopy, videotape, video laser disc, computer  
4 hardware, computer software, computer floppy disc, data storage  
5 media, CD-ROM, or computer-generated equipment or any other  
6 computer-generated image that contains or incorporates in any  
7 manner, any film or filmstrip, with intent to distribute or exhibit  
8 to, or to exchange with, a person 18 years of age or older, or who  
9 offers to distribute, distributes, or exhibits to, or exchanges with,  
10 a person 18 years of age or older any matter, knowing that the  
11 matter depicts a person under the age of 18 years personally  
12 engaging in or personally simulating sexual conduct, as defined  
13 in Section 311.4, shall be punished by imprisonment in the county  
14 jail for up to one year, or by a fine not exceeding two thousand  
15 dollars (\$2,000), or by both that fine and imprisonment, or by  
16 imprisonment in the state prison. It is not necessary to prove  
17 commercial consideration or that the matter is obscene in order to  
18 establish a violation of this subdivision. If a person has been  
19 previously convicted of a violation of this subdivision, he or she  
20 is guilty of a felony.

21 (d) Every person who knowingly sends or causes to be sent, or  
22 brings or causes to be brought, into this state for sale or distribution,  
23 or in this state possesses, prepares, publishes, produces, develops,  
24 duplicates, or prints any representation of information, data, or  
25 image, including, but not limited to, any film, filmstrip, photograph,  
26 negative, slide, photocopy, videotape, video laser disc, computer  
27 hardware, computer software, computer floppy disc, data storage  
28 media, CD-ROM, or computer-generated equipment or any other  
29 computer-generated image that contains or incorporates in any  
30 manner, any film or filmstrip, with intent to distribute or exhibit  
31 to, or to exchange with, a person under 18 years of age, or who  
32 offers to distribute, distributes, or exhibits to, or exchanges with,  
33 a person under 18 years of age any matter, knowing that the matter  
34 depicts a person under the age of 18 years personally engaging in  
35 or personally simulating sexual conduct, as defined in Section  
36 311.4, is guilty of a felony. It is not necessary to prove commercial  
37 consideration or that the matter is obscene in order to establish a  
38 violation of this subdivision.

39 (e) *Alternatively, on or after the operative date of an applicable*  
40 *rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 ~~(e)~~

4 ~~(f)~~ Subdivisions (a) to (d), inclusive, do not apply to the activities  
5 of law enforcement and prosecuting agencies in the investigation  
6 and prosecution of criminal offenses, to legitimate medical,  
7 scientific, or educational activities, or to lawful conduct between  
8 spouses.

9 ~~(f)~~

10 ~~(g)~~ This section does not apply to matter that depicts a legally  
11 emancipated child under the age of 18 years or to lawful conduct  
12 between spouses when one or both are under the age of 18 years.

13 ~~(g)~~

14 ~~(h)~~ It does not constitute a violation of this section for a  
15 telephone corporation, as defined by Section 234 of the Public  
16 Utilities Code, to carry or transmit messages described in this  
17 chapter or to perform related activities in providing telephone  
18 services.

19 *SEC. 180. Section 311.3 of the Penal Code is amended to read:*

20 311.3. (a) A person is guilty of sexual exploitation of a child  
21 if he or she knowingly develops, duplicates, prints, or exchanges  
22 any representation of information, data, or image, including, but  
23 not limited to, any film, filmstrip, photograph, negative, slide,  
24 photocopy, videotape, video laser disc, computer hardware,  
25 computer software, computer floppy disc, data storage media,  
26 CD-ROM, or computer-generated equipment or any other  
27 computer-generated image that contains or incorporates in any  
28 manner, any film or filmstrip that depicts a person under the age  
29 of 18 years engaged in an act of sexual conduct.

30 (b) As used in this section, “sexual conduct” means any of the  
31 following:

32 (1) Sexual intercourse, including genital-genital, oral-genital,  
33 anal-genital, or oral-anal, whether between persons of the same or  
34 opposite sex or between humans and animals.

35 (2) Penetration of the vagina or rectum by any object.

36 (3) Masturbation for the purpose of sexual stimulation of the  
37 viewer.

38 (4) Sadomasochistic abuse for the purpose of sexual stimulation  
39 of the viewer.

1 (5) Exhibition of the genitals or the pubic or rectal area of any  
2 person for the purpose of sexual stimulation of the viewer.

3 (6) Defecation or urination for the purpose of sexual stimulation  
4 of the viewer.

5 (c) Subdivision (a) does not apply to the activities of law  
6 enforcement and prosecution agencies in the investigation and  
7 prosecution of criminal offenses or to legitimate medical, scientific,  
8 or educational activities, or to lawful conduct between spouses.

9 (d) Every person who violates subdivision (a) shall be punished  
10 by a fine of not more than two thousand dollars (\$2,000) or by  
11 imprisonment in a county jail for not more than one year, or by  
12 both that fine and imprisonment. If the person has been previously  
13 convicted of a violation of subdivision (a) or any section of this  
14 chapter, he or she shall be punished by imprisonment in the state  
15 prison.

16 (e) *Alternatively, on or after the operative date of an applicable*  
17 *rule or rules proposed by the California Public Safety Commission,*  
18 *a person who violates this section shall be punished as provided*  
19 *in the applicable sentencing rules.*

20 ~~(e)~~

21 (f) The provisions of this section do not apply to an employee  
22 of a commercial film developer who is acting within the scope of  
23 his or her employment and in accordance with the instructions of  
24 his or her employer, provided that the employee has no financial  
25 interest in the commercial developer by which he or she is  
26 employed.

27 ~~(f)~~

28 (g) Subdivision (a) does not apply to matter that is unsolicited  
29 and is received without knowledge or consent through a facility,  
30 system, or network over which the person or entity has no control.

31 *SEC. 181. Section 311.4 of the Penal Code is amended to read:*

32 311.4. (a) Every person who, with knowledge that a person is  
33 a minor, or who, while in possession of any facts on the basis of  
34 which he or she should reasonably know that the person is a minor,  
35 hires, employs, or uses the minor to do or assist in doing any of  
36 the acts described in Section 311.2, shall be punished by  
37 imprisonment in the county jail for up to one year, or by a fine not  
38 exceeding two thousand dollars (\$2,000), or by both that fine and  
39 imprisonment, or by imprisonment in the state prison. If the person  
40 has previously been convicted of any violation of this section, the

1 court may, in addition to the punishment authorized in Section  
2 311.9, impose a fine not exceeding fifty thousand dollars (\$50,000).

3 (b) Every person who, with knowledge that a person is a minor  
4 under the age of 18 years, or who, while in possession of any facts  
5 on the basis of which he or she should reasonably know that the  
6 person is a minor under the age of 18 years, knowingly promotes,  
7 employs, uses, persuades, induces, or coerces a minor under the  
8 age of 18 years, or any parent or guardian of a minor under the  
9 age of 18 years under his or her control who knowingly permits  
10 the minor, to engage in or assist others to engage in either posing  
11 or modeling alone or with others for purposes of preparing any  
12 representation of information, data, or image, including, but not  
13 limited to, any film, filmstrip, photograph, negative, slide,  
14 photocopy, videotape, video laser disc, computer hardware,  
15 computer software, computer floppy disc, data storage media,  
16 CD-ROM, or computer-generated equipment or any other  
17 computer-generated image that contains or incorporates in any  
18 manner, any film, filmstrip, or a live performance involving, sexual  
19 conduct by a minor under the age of 18 years alone or with other  
20 persons or animals, for commercial purposes, is guilty of a felony  
21 and shall be punished by imprisonment in the state prison for three,  
22 six, or eight years.

23 (c) Every person who, with knowledge that a person is a minor  
24 under the age of 18 years, or who, while in possession of any facts  
25 on the basis of which he or she should reasonably know that the  
26 person is a minor under the age of 18 years, knowingly promotes,  
27 employs, uses, persuades, induces, or coerces a minor under the  
28 age of 18 years, or any parent or guardian of a minor under the  
29 age of 18 years under his or her control who knowingly permits  
30 the minor, to engage in or assist others to engage in either posing  
31 or modeling alone or with others for purposes of preparing any  
32 representation of information, data, or image, including, but not  
33 limited to, any film, filmstrip, photograph, negative, slide,  
34 photocopy, videotape, video laser disc, computer hardware,  
35 computer software, computer floppy disc, data storage media,  
36 CD-ROM, or computer-generated equipment or any other  
37 computer-generated image that contains or incorporates in any  
38 manner, any film, filmstrip, or a live performance involving, sexual  
39 conduct by a minor under the age of 18 years alone or with other  
40 persons or animals, is guilty of a felony. It is not necessary to prove

1 commercial purposes in order to establish a violation of this  
2 subdivision.

3 *(d) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 ~~(d)~~

8 *(e) (1) As used in subdivisions (b) and (c), “sexual conduct”*  
9 *means any of the following, whether actual or simulated: sexual*  
10 *intercourse, oral copulation, anal intercourse, anal oral copulation,*  
11 *masturbation, bestiality, sexual sadism, sexual masochism,*  
12 *penetration of the vagina or rectum by any object in a lewd or*  
13 *lascivious manner, exhibition of the genitals or pubic or rectal area*  
14 *for the purpose of sexual stimulation of the viewer, any lewd or*  
15 *lascivious sexual act as defined in Section 288, or excretory*  
16 *functions performed in a lewd or lascivious manner, whether or*  
17 *not any of the above conduct is performed alone or between*  
18 *members of the same or opposite sex or between humans and*  
19 *animals. An act is simulated when it gives the appearance of being*  
20 *sexual conduct.*

21 *(2) As used in subdivisions (b) and (c), “matter” means any*  
22 *film, filmstrip, photograph, negative, slide, photocopy, videotape,*  
23 *video laser disc, computer hardware, computer software, computer*  
24 *floppy disc, or any other computer-related equipment or*  
25 *computer-generated image that contains or incorporates in any*  
26 *manner, any film, filmstrip, photograph, negative, slide, photocopy,*  
27 *videotape, or video laser disc.*

28 ~~(e)~~

29 *(f) This section does not apply to a legally emancipated minor*  
30 *or to lawful conduct between spouses if one or both are under the*  
31 *age of 18.*

32 ~~(f)~~

33 *(g) In every prosecution under this section involving a minor*  
34 *under the age of 14 years at the time of the offense, the age of the*  
35 *victim shall be pled and proven for the purpose of the enhanced*  
36 *penalty provided in Section 647.6. Failure to plead and prove that*  
37 *the victim was under the age of 14 years at the time of the offense*  
38 *is not a bar to prosecution under this section if it is proven that the*  
39 *victim was under the age of 18 years at the time of the offense.*

40 *SEC. 182. Section 311.5 of the Penal Code is amended to read:*

1     311.5. (a) Every person who writes, creates, or solicits the  
2 publication or distribution of advertising or other promotional  
3 material, or who in any manner promotes, the sale, distribution,  
4 or exhibition of matter represented or held out by him to be  
5 obscene, is guilty of a misdemeanor.

6     (b) *Alternatively, on or after the operative date of an applicable*  
7 *rule or rules proposed by the California Public Safety Commission,*  
8 *a person who violates this section shall be punished as provided*  
9 *in the applicable sentencing rules.*

10     SEC. 183. *Section 311.6 of the Penal Code is amended to read:*

11     311.6. (a) Every person who knowingly engages or participates  
12 in, manages, produces, sponsors, presents or exhibits obscene live  
13 conduct to or before an assembly or audience consisting of at least  
14 one person or spectator in any public place or in any place exposed  
15 to public view, or in any place open to the public or to a segment  
16 thereof, whether or not an admission fee is charged, or whether or  
17 not attendance is conditioned upon the presentation of a  
18 membership card or other token, is guilty of a misdemeanor.

19     (b) *Alternatively, on or after the operative date of an applicable*  
20 *rule or rules proposed by the California Public Safety Commission,*  
21 *a person who violates this section shall be punished as provided*  
22 *in the applicable sentencing rules.*

23     SEC. 184. *Section 311.7 of the Penal Code is amended to read:*

24     311.7. (a) Every person who, knowingly, as a condition to a  
25 sale, allocation, consignment, or delivery for resale of any paper,  
26 magazine, book, periodical, publication or other merchandise,  
27 requires that the purchaser or consignee receive any obscene matter  
28 or who denies or threatens to deny a franchise, revokes or threatens  
29 to revoke, or imposes any penalty, financial or otherwise, by reason  
30 of the failure of any person to accept obscene matter, or by reason  
31 of the return of such obscene matter, is guilty of a misdemeanor.

32     (b) *Alternatively, on or after the operative date of an applicable*  
33 *rule or rules proposed by the California Public Safety Commission,*  
34 *a person who violates this section shall be punished as provided*  
35 *in the applicable sentencing rules.*

36     SEC. 185. *Section 311.9 of the Penal Code is amended to read:*

37     311.9. (a) Every person who violates subdivision (a) of Section  
38 311.2 or Section 311.5 is punishable by fine of not more than one  
39 thousand dollars (\$1,000) plus five dollars (\$5) for each additional  
40 unit of material coming within the provisions of this chapter, which

is involved in the offense, not to exceed ten thousand dollars (\$10,000), or by imprisonment in the county jail for not more than six months plus one day for each additional unit of material coming within the provisions of this chapter, and which is involved in the offense, not to exceed a total of 360 days in the county jail, or by both that fine and imprisonment. If that person has previously been convicted of any offense in this chapter, or of a violation of Section 313.1, a violation of subdivision (a) of Section 311.2 or Section 311.5 is punishable as a felony.

(b) Every person who violates subdivision (a) of Section 311.4 is punishable by fine of not more than two thousand dollars (\$2,000) or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment, or by imprisonment in the state prison. If that person has been previously convicted of a violation of former Section 311.3 or Section 311.4 he or she is punishable by imprisonment in the state prison.

(c) Every person who violates Section 311.7 is punishable by fine of not more than one thousand dollars (\$1,000) or by imprisonment in the county jail for not more than six months, or by both that fine and imprisonment. For a second and subsequent offense he or she shall be punished by a fine of not more than two thousand dollars (\$2,000), or by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. If the person has been twice convicted of a violation of this chapter, a violation of Section 311.7 is punishable as a felony.

*(d) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

*SEC. 186. Section 311.10 of the Penal Code is amended to read:*

311.10. (a) Any person who advertises for sale or distribution any obscene matter knowing that it depicts a person under the age of 18 years personally engaging in or personally simulating sexual conduct, as defined in Section 311.4, is guilty of a felony and is punishable by imprisonment in the state prison for two, three, or four years, or in a county jail not exceeding one year, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both ~~such~~ *that* fine and imprisonment.

1     (b) *Alternatively, on or after the operative date of an applicable*  
2 *rule or rules proposed by the California Public Safety Commission,*  
3 *a person who violates this section shall be punished as provided*  
4 *in the applicable sentencing rules.*

5     ~~(b)~~

6     (c) Subdivision (a) shall not apply to the activities of law  
7 enforcement and prosecution agencies in the investigation and  
8 prosecution of criminal offenses.

9     *SEC. 187. Section 311.11 of the Penal Code is amended to*  
10 *read:*

11     311.11. (a) Every person who knowingly possesses or controls  
12 any matter, representation of information, data, or image, including,  
13 but not limited to, any film, filmstrip, photograph, negative, slide,  
14 photocopy, videotape, video laser disc, computer hardware,  
15 computer software, computer floppy disc, data storage media,  
16 CD-ROM, or computer-generated equipment or any other  
17 computer-generated image that contains or incorporates in any  
18 manner, any film or filmstrip, the production of which involves  
19 the use of a person under the age of 18 years, knowing that the  
20 matter depicts a person under the age of 18 years personally  
21 engaging in or simulating sexual conduct, as defined in subdivision  
22 (d) of Section 311.4, is guilty of a felony and shall be punished by  
23 imprisonment in the state prison, or a county jail for up to one  
24 year, or by a fine not exceeding two thousand five hundred dollars  
25 (\$2,500), or by both the fine and imprisonment.

26     (b) Every person who commits a violation of subdivision (a),  
27 and who has been previously convicted of a violation of this  
28 section, an offense requiring registration under the Sex Offender  
29 Registration Act, or an attempt to commit any of the  
30 above-mentioned offenses, is guilty of a felony and shall be  
31 punished by imprisonment in the state prison for two, four, or six  
32 years.

33     (c) It is not necessary to prove that the matter is obscene in order  
34 to establish a violation of this section.

35     (d) *Alternatively, on or after the operative date of an applicable*  
36 *rule or rules proposed by the California Public Safety Commission,*  
37 *a person who violates this section shall be punished as provided*  
38 *in the applicable sentencing rules, except that no sentencing rule*  
39 *shall change any provision of this section that was specifically*  
40 *added by voter initiative.*



~~(d)~~

(e) This section does not apply to drawings, figurines, statues, or any film rated by the Motion Picture Association of America, nor does it apply to live or recorded telephone messages when transmitted, disseminated, or distributed as part of a commercial transaction.

*SEC. 188. Section 313.4 of the Penal Code is amended to read:*

313.4. (a) Every person who violates Section 313.1, other than subdivision (e), is punishable by fine of not more than two thousand dollars (\$2,000), by imprisonment in the county jail for not more than one year, or by both that fine and imprisonment. However, if the person has been previously convicted of a violation of Section 313.1, other than subdivision (e), or of any section of Chapter 7.5 (commencing with Section 311) of Title 9 of Part 1 of this code, the person shall be punished by imprisonment in the state prison.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

*SEC. 189. Section 314 of the Penal Code is amended to read:*

314. (a) Every person who willfully and lewdly, *does* either of the following is guilty of a misdemeanor:

1.

(1) Exposes his person, or the private parts thereof, in any public place, or in any place where there are present other persons to be offended or annoyed thereby; ~~or,~~

2.

(2) Procures, counsels, or assists any person so to expose himself or take part in any model artist exhibition, or to make any other exhibition of himself to public view, or the view of any number of persons, such as is offensive to decency, or is adapted to excite to vicious or lewd thoughts or acts; ~~is guilty of a misdemeanor.~~

~~Every~~

(b) ~~Every~~ Every person who violates ~~subdivision 1 of this section~~ paragraph (1) of subdivision (a) after having entered, without consent, an inhabited dwelling house, or trailer coach as defined in Section 635 of the Vehicle Code, or the inhabited portion of any other building, is punishable by imprisonment in the state prison, or in the county jail not exceeding one year.

~~Upon~~

1 (c) Upon the second and each subsequent conviction under  
2 ~~subdivision 1 of this section, or upon a first conviction under~~  
3 ~~subdivision 1 of this section~~ paragraph (1) of subdivision (a), or  
4 upon a first conviction of that paragraph after a previous  
5 conviction under Section 288, every person so convicted is guilty  
6 of a felony, and is punishable by imprisonment in state prison.

7 (d) Alternatively, on or after the operative date of an applicable  
8 rule or rules proposed by the California Public Safety Commission,  
9 a person who violates this section shall be punished as provided  
10 in the applicable sentencing rules.

11 SEC. 190. Section 327 of the Penal Code is amended to read:

12 327. (a) Every person who contrives, prepares, sets up,  
13 proposes, or operates any endless chain is guilty of a public offense,  
14 and is punishable by imprisonment in ~~the~~ a county jail not  
15 exceeding one year or in state prison for 16 months, two, or three  
16 years.

17 As used in this section, an “endless chain” means any scheme  
18 for the disposal or distribution of property whereby a participant  
19 pays a valuable consideration for the chance to receive  
20 compensation for introducing one or more additional persons into  
21 participation in the scheme or for the chance to receive  
22 compensation when a person introduced by the participant  
23 introduces a new participant. Compensation, as used in this section,  
24 does not mean or include payment based upon sales made to  
25 persons who are not participants in the scheme and who are not  
26 purchasing in order to participate in the scheme.

27 (b) Alternatively, on or after the operative date of an applicable  
28 rule or rules proposed by the California Public Safety Commission,  
29 a person who violates this section shall be punished as provided  
30 in the applicable sentencing rules.

31 SEC. 191. Section 337.4 of the Penal Code is amended to read:

32 337.4. Any person who in the commission of touting obtains  
33 money in excess of ~~four hundred dollars (\$400)~~ twenty-five hundred  
34 dollars (\$2,500) may, in addition to being prosecuted for the  
35 violation of any provision of this chapter, be prosecuted for the  
36 violation of Section 487 of this code.

37 SEC. 192. Section 350 of the Penal Code is amended to read:

38 350. (a) Any person who willfully manufactures, intentionally  
39 sells, or knowingly possesses for sale any counterfeit mark  
40 registered with the Secretary of State or registered on the Principal

1 Register of the United States Patent and Trademark Office, shall,  
2 upon conviction, be punishable as follows:

3 (1) When the offense involves less than 1,000 of the articles  
4 described in this subdivision, with a total retail or fair market value  
5 less than that required for grand theft as defined in Section 487,  
6 and if the person is an individual, he or she shall be punished by  
7 a fine of not more than five thousand dollars (\$5,000), or by  
8 imprisonment in a county jail for not more than one year, or by  
9 both that fine and imprisonment; or, if the person is a business  
10 entity, by a fine of not more than one hundred thousand dollars  
11 (\$100,000).

12 (2) When the offense involves 1,000 or more of the articles  
13 described in this subdivision, or has a total retail or fair market  
14 value equal to or greater than that required for grand theft as  
15 defined in Section 487, and if the person is an individual, he or  
16 she shall be punished by imprisonment in a county jail not to  
17 exceed one year, or in the state prison for 16 months, or two or  
18 three years, or by a fine not to exceed two hundred fifty thousand  
19 dollars (\$250,000), or by both that imprisonment and fine; or, if  
20 the person is a business entity, by a fine not to exceed five hundred  
21 thousand dollars (\$500,000).

22 (b) Any person who has been convicted of a violation of either  
23 paragraph (1) or (2) of subdivision (a) shall, upon a subsequent  
24 conviction of paragraph (1) of subdivision (a), if the person is an  
25 individual, be punished by a fine of not more than fifty thousand  
26 dollars (\$50,000), or by imprisonment in a county jail for not more  
27 than one year, or in the state prison for 16 months, or two or three  
28 years, or by both that fine and imprisonment; or, if the person is  
29 a business entity, by a fine of not more than two hundred thousand  
30 dollars (\$200,000).

31 (c) Any person who has been convicted of a violation of  
32 subdivision (a) and who, by virtue of the conduct that was the basis  
33 of the conviction, has directly and foreseeably caused death or  
34 great bodily injury to another through reliance on the counterfeited  
35 item for its intended purpose shall, if the person is an individual,  
36 be punished by a fine of not more than fifty thousand dollars  
37 (\$50,000), or by imprisonment in the state prison for two, three,  
38 or four years, or by both that fine and imprisonment; or, if the  
39 person is a business entity, by a fine of not more than two hundred  
40 thousand dollars (\$200,000).

(d) In any action brought under this section resulting in a conviction or a plea of nolo contendere, the court shall order the forfeiture and destruction of all of those marks and of all goods, articles, or other matter bearing the marks, and the forfeiture and destruction or other disposition of all means of making the marks, and any and all electrical, mechanical, or other devices for manufacturing, reproducing, transporting, or assembling these marks, that were used in connection with, or were part of, any violation of this section. Forfeiture of the proceeds of the crime shall be subject to Chapter 9 (commencing with Section 186) of Title 7 of Part 1. However, no vehicle shall be forfeited under this section that may be lawfully driven on the highway with a class 3 or 4 license, as prescribed in Section 12804 of the Vehicle Code, and that is any of the following:

(1) A community property asset of a person other than the defendant.

(2) The sole class 3 or 4 vehicle available to the immediate family of that person or of the defendant.

(3) Reasonably necessary to be retained by the defendant for the purpose of lawfully earning a living, or for any other reasonable and lawful purpose.

(e) For the purposes of this section, the following definitions shall apply:

(1) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals, or licensing envelopes, the number of “articles” shall be equivalent to the number of completed computer software packages that could have been made from those components.

(2) “Business entity” includes, but is not limited to, a corporation, limited liability company, or partnership. “Business entity” does not include a sole proprietorship.

(3) “Counterfeit mark” means a spurious mark that is identical with, or confusingly similar to, a registered mark and is used, or intended to be used, on or in connection with the same type of goods or services for which the genuine mark is registered. It is not necessary for the mark to be displayed on the outside of an article for there to be a violation. For articles containing digitally stored information, it shall be sufficient to constitute a violation if the counterfeit mark appears on a video display when the

1 information is retrieved from the article. The term “spurious mark”  
2 includes genuine marks used on or in connection with spurious  
3 articles and includes identical articles containing identical marks,  
4 where the goods or marks were reproduced without authorization  
5 of, or in excess of any authorization granted by, the registrant.  
6 When counterfeited but unassembled components of any articles  
7 described under subdivision (a) are recovered, including, but not  
8 limited to, labels, patches, fabric, stickers, wrappers, badges,  
9 emblems, medallions, charms, boxes, containers, cans, cases,  
10 hangtags, documentation, or packaging, or any other components  
11 of any type or nature that are designed, marketed, or otherwise  
12 intended to be used on or in connection with any articles described  
13 under subdivision (a), the number of “articles” shall be equivalent  
14 to the number of completed articles that could have been made  
15 from those components.

16 (4) “Knowingly possess” means that the person possessing an  
17 article knew or had reason to believe that it was spurious, or that  
18 it was used on or in connection with spurious articles, or that it  
19 was reproduced without authorization of, or in excess of any  
20 authorization granted by, the registrant.

21 (5) Notwithstanding Section 7, “person” includes, but is not  
22 limited to, a business entity.

23 (6) “Registrant” means any person to whom the registration of  
24 a mark is issued and that person’s legal representatives, successors,  
25 or assigns.

26 (7) “Sale” includes resale.

27 (8) “Value” has the following meanings:

28 (A) When counterfeit items of computer software are  
29 manufactured or possessed for sale, the “value” of those items  
30 shall be equivalent to the retail price or fair market price of the  
31 true items that are counterfeited.

32 (B) When counterfeited but unassembled components of  
33 computer software packages or any other articles described under  
34 subdivision (a) are recovered, including, but not limited to,  
35 counterfeited digital disks, instruction manuals, licensing  
36 envelopes, labels, patches, fabric, stickers, wrappers, badges,  
37 emblems, medallions, charms, boxes, containers, cans, cases,  
38 hangtags, documentation, or packaging, or any other components  
39 of any type or nature that are designed, marketed, or otherwise  
40 intended to be used on or in connection with any articles described

1 under subdivision (a), the “value” of those components shall be  
2 equivalent to the retail price or fair market value of the number of  
3 completed computer software packages or other completed articles  
4 described under subdivision (a) that could have been made from  
5 those components.

6 (C) “Retail or fair market value” of a counterfeit article means  
7 a value equivalent to the retail price or fair market value, as of the  
8 last day of the charged crime, of a completed similar genuine article  
9 containing a genuine mark.

10 (f) This section shall not be enforced against any party who has  
11 adopted and lawfully used the same or confusingly similar mark  
12 in the rendition of like services or the manufacture or sale of like  
13 goods in this state from a date prior to the earliest effective date  
14 of registration of the service mark or trademark either with the  
15 Secretary of State or on the Principle Register of the United States  
16 Patent and Trademark Office.

17 (g) An owner, officer, employee, or agent who provides, rents,  
18 leases, licenses, or sells real property upon which a violation of  
19 subdivision (a) occurs shall not be subject to a criminal penalty  
20 pursuant to this section, unless he or she sells, or possesses for  
21 sale, articles bearing a counterfeit mark in violation of this section.  
22 This subdivision shall not be construed to abrogate or limit any  
23 civil rights or remedies for a trademark violation.

24 (h) This section shall not be enforced against any party who  
25 engages in fair uses of a mark, as specified in Section 14247 of  
26 the Business and Professions Code.

27 (i) When a person is convicted of an offense under this section,  
28 the court shall order the person to pay restitution to the trademark  
29 owner and any other victim of the offense pursuant to Section  
30 1202.4.

31 (j) *Alternatively, on or after the operative date of an applicable*  
32 *rule or rules proposed by the California Public Safety Commission,*  
33 *a person who violates this section shall be punished as provided*  
34 *in the applicable sentencing rules.*

35 SEC. 193. *Section 368 of the Penal Code is amended to read:*

36 368. (a) The Legislature finds and declares that crimes against  
37 elders and dependent adults are deserving of special consideration  
38 and protection, not unlike the special protections provided for  
39 minor children, because elders and dependent adults may be  
40 confused, on various medications, mentally or physically impaired,

1 or incompetent, and therefore less able to protect themselves, to  
2 understand or report criminal conduct, or to testify in court  
3 proceedings on their own behalf.

4 (b) (1) Any person who knows or reasonably should know that  
5 a person is an elder or dependent adult and who, under  
6 circumstances or conditions likely to produce great bodily harm  
7 or death, willfully causes or permits any elder or dependent adult  
8 to suffer, or inflicts thereon unjustifiable physical pain or mental  
9 suffering, or having the care or custody of any elder or dependent  
10 adult, willfully causes or permits the person or health of the elder  
11 or dependent adult to be injured, or willfully causes or permits the  
12 elder or dependent adult to be placed in a situation in which his or  
13 her person or health is endangered, is punishable by imprisonment  
14 in a county jail not exceeding one year, or by a fine not to exceed  
15 six thousand dollars (\$6,000), or by both that fine and  
16 imprisonment, or by imprisonment in the state prison for two,  
17 three, or four years.

18 (2) If in the commission of an offense described in paragraph  
19 (1), the victim suffers great bodily injury, as defined in Section  
20 12022.7, the defendant shall receive an additional term in the state  
21 prison as follows:

22 (A) Three years if the victim is under 70 years of age.

23 (B) Five years if the victim is 70 years of age or older.

24 (3) If in the commission of an offense described in paragraph  
25 (1), the defendant proximately causes the death of the victim, the  
26 defendant shall receive an additional term in the state prison as  
27 follows:

28 (A) Five years if the victim is under 70 years of age.

29 (B) Seven years if the victim is 70 years of age or older.

30 (c) Any person who knows or reasonably should know that a  
31 person is an elder or dependent adult and who, under circumstances  
32 or conditions other than those likely to produce great bodily harm  
33 or death, willfully causes or permits any elder or dependent adult  
34 to suffer, or inflicts thereon unjustifiable physical pain or mental  
35 suffering, or having the care or custody of any elder or dependent  
36 adult, willfully causes or permits the person or health of the elder  
37 or dependent adult to be injured or willfully causes or permits the  
38 elder or dependent adult to be placed in a situation in which his or  
39 her person or health may be endangered, is guilty of a  
40 misdemeanor. A second or subsequent violation of this subdivision

1 is punishable by a fine not to exceed two thousand dollars (\$2,000),  
2 or by imprisonment in a county jail not to exceed one year, or by  
3 both that fine and imprisonment.

4 (d) Any person who is not a caretaker who violates any provision  
5 of law proscribing theft, embezzlement, forgery, or fraud, or who  
6 violates Section 530.5 proscribing identity theft, with respect to  
7 the property or personal identifying information of an elder or a  
8 dependent adult, and who knows or reasonably should know that  
9 the victim is an elder or a dependent adult, is punishable by  
10 imprisonment in a county jail not exceeding one year, or in the  
11 state prison for two, three, or four years, when the moneys, labor,  
12 goods, services, or real or personal property taken or obtained is  
13 of a value exceeding ~~four hundred dollars (\$400)~~ *nine hundred*  
14 *and fifty dollars (\$950)*; and by a fine not exceeding one thousand  
15 dollars (\$1,000), by imprisonment in a county jail not exceeding  
16 one year, or by both that fine and imprisonment, when the moneys,  
17 labor, goods, services, or real or personal property taken or obtained  
18 is of a value not exceeding ~~four hundred dollars (\$400)~~ *nine*  
19 *hundred and fifty dollars (\$950)*.

20 (e) Any caretaker of an elder or a dependent adult who violates  
21 any provision of law proscribing theft, embezzlement, forgery, or  
22 fraud, or who violates Section 530.5 proscribing identity theft,  
23 with respect to the property or personal identifying information of  
24 that elder or dependent adult, is punishable by imprisonment in a  
25 county jail not exceeding one year, or in the state prison for two,  
26 three, or four years when the moneys, labor, goods, services, or  
27 real or personal property taken or obtained is of a value exceeding  
28 ~~four hundred dollars (\$400)~~ *nine hundred and fifty dollars (\$950)*,  
29 and by a fine not exceeding one thousand dollars (\$1,000), by  
30 imprisonment in a county jail not exceeding one year, or by both  
31 that fine and imprisonment, when the moneys, labor, goods,  
32 services, or real or personal property taken or obtained is of a value  
33 not exceeding ~~four hundred dollars (\$400)~~ *nine hundred and fifty*  
34 *dollars (\$950)*.

35 (f) Any person who commits the false imprisonment of an elder  
36 or a dependent adult by the use of violence, menace, fraud, or  
37 deceit is punishable by imprisonment in the state prison for two,  
38 three, or four years.

39 (g) *Alternatively, on or after the operative date of an applicable*  
40 *rule or rules proposed by the California Public Safety Commission,*



1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 ~~(g)~~

4 *(h) As used in this section, “elder” means any person who is 65*  
5 *years of age or older.*

6 ~~(h)~~

7 *(i) As used in this section, “dependent adult” means any person*  
8 *who is between the ages of 18 and 64, who has physical or mental*  
9 *limitations which restrict his or her ability to carry out normal*  
10 *activities or to protect his or her rights, including, but not limited*  
11 *to, persons who have physical or developmental disabilities or*  
12 *whose physical or mental abilities have diminished because of*  
13 *age. “Dependent adult” includes any person between the ages of*  
14 *18 and 64 who is admitted as an inpatient to a 24-hour health*  
15 *facility, as defined in Sections 1250, 1250.2, and 1250.3 of the*  
16 *Health and Safety Code.*

17 ~~(i)~~

18 *(j) As used in this section, “caretaker” means any person who*  
19 *has the care, custody, or control of, or who stands in a position of*  
20 *trust with, an elder or a dependent adult.*

21 ~~(j)~~

22 *(k) Nothing in this section shall preclude prosecution under both*  
23 *this section and Section 187 or 12022.7 or any other provision of*  
24 *law. However, a person shall not receive an additional term of*  
25 *imprisonment under both paragraphs (2) and (3) of subdivision*  
26 *(b) for any single offense, nor shall a person receive an additional*  
27 *term of imprisonment under both Section 12022.7 and paragraph*  
28 *(2) or (3) of subdivision (b) for any single offense.*

29 ~~(k)~~

30 *(l) In any case in which a person is convicted of violating these*  
31 *provisions, the court may require him or her to receive appropriate*  
32 *counseling as a condition of probation. Any defendant ordered to*  
33 *be placed in a counseling program shall be responsible for paying*  
34 *the expense of his or her participation in the counseling program*  
35 *as determined by the court. The court shall take into consideration*  
36 *the ability of the defendant to pay, and no defendant shall be denied*  
37 *probation because of his or her inability to pay.*

38 *SEC. 194. Section 380 of the Penal Code is amended to read:*

39 *380. (a) Every person who sells, dispenses or distributes*  
40 *toluene, or any substance or material containing toluene, to any*

1 person who is less than 18 years of age shall be guilty of a  
2 misdemeanor, and upon conviction shall be fined in a sum of not  
3 less than one thousand dollars (\$1,000), nor more than two  
4 thousand five hundred dollars (\$2,500), or by imprisonment for  
5 not less than six months nor more than one year.

6 *(b) Alternatively, on or after the operative date of an applicable*  
7 *rule or rules proposed by the California Public Safety Commission,*  
8 *a person who violates this section shall be punished as provided*  
9 *in the applicable sentencing rules.*

10 ~~(b)~~

11 (c) The court shall order the suspension of the business license,  
12 for a period of one year, of a person who knowingly violates any  
13 of the provisions of this section after having been previously  
14 convicted of a violation of this section unless the owner of such  
15 business license can demonstrate a good faith attempt to prevent  
16 illegal sales or deliveries by employees. The provisions of this  
17 subdivision shall become operative on July 1, 1980.

18 ~~(c)~~

19 (d) The provisions of this section shall apply to, but are not  
20 limited to, the sale or distribution of glue, cement, dope, paint  
21 thinners, paint, and any combination of hydrocarbons either alone  
22 or in combination with any substance or material including, but  
23 not limited to, paint, paint thinners, shellac thinners, and solvents  
24 which, when inhaled, ingested or breathed, can cause a person to  
25 be under the influence of, or intoxicated from, any such  
26 combination of hydrocarbons.

27 This section shall not prohibit the sale of gasoline or other motor  
28 vehicle fuels to persons less than 18 years of age.

29 ~~(d)~~

30 (e) This section shall not apply to any glue or cement which has  
31 been certified by the State Department of Health Services as  
32 containing a substance which makes such glue or cement  
33 malodorous or causes such glue or cement to induce sneezing, nor  
34 shall this section apply where the glue or cement is sold, delivered,  
35 or given away simultaneously with or as part of a kit used for the  
36 construction of model airplanes, model boats, model automobiles,  
37 model trains, or other similar models or used for the assembly or  
38 creation of hobby craft items using such components as beads,  
39 tiles, tiffany glass, ceramics, clay, or other craft-related  
40 components.

1     *SEC. 195. Section 381 of the Penal Code is amended to read:*

2     381. (a) Any person who possesses toluene or any substance  
3 or material containing toluene, including, but not limited to, glue,  
4 cement, dope, paint thinner, paint and any combination of  
5 hydrocarbons, either alone or in combination with any substance  
6 or material including but not limited to paint, paint thinner, shellac  
7 thinner, and solvents, with the intent to breathe, inhale or ingest  
8 for the purpose of causing a condition of intoxication, elation,  
9 euphoria, dizziness, stupefaction, or dulling of the senses or for  
10 the purpose of, in any manner, changing, distorting or disturbing  
11 the audio, visual, or mental processes, or who knowingly and with  
12 the intent to do so is under the influence of toluene or any material  
13 containing toluene, or any combination of hydrocarbons is guilty  
14 of a misdemeanor.

15     (b) Any person who possesses any substance or material, which  
16 the State Department of Health Services has determined by  
17 regulations adopted pursuant to the Administrative Procedures Act  
18 (Chapter 3.5 (commencing with Section 11340) of Part 1 of  
19 Division 3 of Title 2 of the Government Code) has toxic qualities  
20 similar to toluene, with the intent to breathe, inhale, or ingest for  
21 the purpose of causing a condition of intoxication, elation,  
22 euphoria, dizziness, excitement, irrational behavior, exhilaration,  
23 satisfaction, stupefaction, or dulling of the senses or for the purpose  
24 of, in any manner, changing, distorting or disturbing the audio,  
25 visual, or mental processes, or who is under the influence of such  
26 substance or material is guilty of a misdemeanor.

27     (c) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31     *SEC. 196. Section 381b of the Penal Code is amended to read:*

32     381b. (a) Any person who possesses nitrous oxide or any  
33 substance containing nitrous oxide, with the intent to breathe,  
34 inhale, or ingest for the purpose of causing a condition of  
35 intoxication, elation, euphoria, dizziness, stupefaction, or dulling  
36 of the senses or for the purpose of, in any manner, changing,  
37 distorting, or disturbing the audio, visual, or mental processes, or  
38 who knowingly and with the intent to do so is under the influence  
39 of nitrous oxide or any material containing nitrous oxide is guilty  
40 of a misdemeanor. This section shall not apply to any person who

1 is under the influence of nitrous oxide or any material containing  
2 nitrous oxide pursuant to an administration for the purpose of  
3 medical, surgical, or dental care by a person duly licensed to  
4 administer such an agent.

5 *(b) Alternatively, on or after the operative date of an applicable*  
6 *rule or rules proposed by the California Public Safety Commission,*  
7 *a person who violates this section shall be punished as provided*  
8 *in the applicable sentencing rules.*

9 *SEC. 197. Section 422 of the Penal Code is amended to read:*

10 422. (a) Any person who willfully threatens to commit a crime  
11 which will result in death or great bodily injury to another person,  
12 with the specific intent that the statement, made verbally, in  
13 writing, or by means of an electronic communication device, is to  
14 be taken as a threat, even if there is no intent of actually carrying  
15 it out, which, on its face and under the circumstances in which it  
16 is made, is so unequivocal, unconditional, immediate, and specific  
17 as to convey to the person threatened, a gravity of purpose and an  
18 immediate prospect of execution of the threat, and thereby causes  
19 that person reasonably to be in sustained fear for his or her own  
20 safety or for his or her immediate family's safety, shall be punished  
21 by imprisonment in the county jail not to exceed one year, or by  
22 imprisonment in the state prison.

23 *(b) Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who violates this section shall be punished as provided*  
26 *in the applicable sentencing rules.*

27 ~~For~~

28 (c) (1) For the purposes of this section, "immediate family"  
29 means any spouse, whether by marriage or not, parent, child, any  
30 person related by consanguinity or affinity within the second  
31 degree, or any other person who regularly resides in the household,  
32 or who, within the prior six months, regularly resided in the  
33 household.

34 ~~"Electronic~~

35 (2) "Electronic communication device" includes, but is not  
36 limited to, telephones, cellular telephones, computers, video  
37 recorders, fax machines, or pagers. "Electronic communication"  
38 has the same meaning as the term defined in Subsection 12 of  
39 Section 2510 of Title 18 of the United States Code.

40 *SEC. 198. Section 422.7 of the Penal Code is amended to read:*

422.7. Except in the case of a person punished under Section 422.6, any hate crime that is not made punishable by imprisonment in the state prison shall be punishable by imprisonment in the state prison or in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine, if the crime is committed against the person or property of another for the purpose of intimidating or interfering with that other person's free exercise or enjoyment of any right secured to him or her by the Constitution or laws of this state or by the Constitution or laws of the United States under any of the following circumstances, which shall be charged in the accusatory pleading:

(a) The crime against the person of another either includes the present ability to commit a violent injury or causes actual physical injury.

(b) The crime against property causes damage in excess of ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*.

(c) The person charged with a crime under this section has been convicted previously of a violation of subdivision (a) or (b) of Section 422.6, or has been convicted previously of a conspiracy to commit a crime described in subdivision (a) or (b) of Section 422.6.

*SEC. 199. Section 422.75 of the Penal Code is amended to read:*

422.75. (a) Except in the case of a person punished under Section 422.7, a person who commits a felony that is a hate crime or attempts to commit a felony that is a hate crime, shall receive an additional term of one, two, or three years in the state prison, at the court's discretion.

(b) Except in the case of a person punished under Section 422.7 or subdivision (a) of this section, any person who commits a felony that is a hate crime, or attempts to commit a felony that is a hate crime, and who voluntarily acted in concert with another person, either personally or by aiding and abetting another person, shall receive an additional two, three, or four years in the state prison, at the court's discretion.

(c) For the purpose of imposing an additional term under subdivision (a) or (b), it shall be a factor in aggravation that the defendant personally used a firearm in the commission of the offense. Nothing in this subdivision shall preclude a court from

1 also imposing a sentence enhancement pursuant to Section 12022.5,  
2 12022.53, or 12022.55, or any other law.

3 (d) A person who is punished pursuant to this section also shall  
4 receive an additional term of one year in the state prison for each  
5 prior felony conviction on charges brought and tried separately in  
6 which it was found by the trier of fact or admitted by the defendant  
7 that the crime was a hate crime. This additional term shall only  
8 apply where a sentence enhancement is not imposed pursuant to  
9 Section 667 or 667.5.

10 (e) Any additional term authorized by this section shall not be  
11 imposed unless the allegation is charged in the accusatory pleading  
12 and admitted by the defendant or found to be true by the trier of  
13 fact.

14 (f) Any additional term imposed pursuant to this section shall  
15 be in addition to any other punishment provided by law.

16 (g) Notwithstanding any other provision of law, the court may  
17 strike any additional term imposed by this section if the court  
18 determines that there are mitigating circumstances and states on  
19 the record the reasons for striking the additional punishment.

20 (h) *Alternatively, on or after the operative date of an applicable*  
21 *rule or rules proposed by the California Public Safety Commission,*  
22 *a person who violates this section shall be punished as provided*  
23 *in the applicable sentencing rules.*

24 SEC. 200. Section 451 of the Penal Code is amended to read:

25 451. A person is guilty of arson when he or she willfully and  
26 maliciously sets fire to or burns or causes to be burned or who  
27 aids, counsels, or procures the burning of, any structure, forest  
28 land, or property.

29 (a) Arson that causes great bodily injury is a felony punishable  
30 by imprisonment in the state prison for five, seven, or nine years.

31 (b) Arson that causes an inhabited structure or inhabited property  
32 to burn is a felony punishable by imprisonment in the state prison  
33 for three, five, or eight years.

34 (c) Arson of a structure or forest land is a felony punishable by  
35 imprisonment in the state prison for two, four, or six years.

36 (d) Arson of property is a felony punishable by imprisonment  
37 in the state prison for 16 months, two, or three years. For purposes  
38 of this ~~paragraph~~ subdivision, arson of property does not include  
39 one burning or causing to be burned his or her own personal  
40 property unless there is an intent to defraud or there is injury to

1 another person or another person's structure, forest land, or  
2 property.

3 (e) In the case of any person convicted of violating this section  
4 while confined in a state prison, prison road camp, prison forestry  
5 camp, or other prison camp or prison farm, or while confined in a  
6 county jail while serving a term of imprisonment for a felony or  
7 misdemeanor conviction, any sentence imposed shall be  
8 consecutive to the sentence for which the person was then confined.

9 (f) *Alternatively, on or after the operative date of an applicable*  
10 *rule or rules proposed by the California Public Safety Commission,*  
11 *a person who violates this section shall be punished as provided*  
12 *in the applicable sentencing rules.*

13 SEC. 201. Section 451.1 of the Penal Code is amended to read:

14 451.1. (a) Notwithstanding any other law, any person who is  
15 convicted of a felony violation of Section 451 shall be punished  
16 by a three-, four-, or five-year enhancement if one or more of the  
17 following circumstances is found to be true:

18 (1) The defendant has been previously convicted of a felony  
19 violation of Section 451 or 452.

20 (2) A firefighter, peace officer, or other emergency personnel  
21 suffered great bodily injury as a result of the offense. The additional  
22 term provided by this subdivision shall be imposed whenever  
23 applicable, including any instance in which there is a violation of  
24 subdivision (a) of Section 451.

25 (3) The defendant proximately caused great bodily injury to  
26 more than one victim in any single violation of Section 451. The  
27 additional term provided by this subdivision shall be imposed  
28 whenever applicable, including any instance in which there is a  
29 violation of subdivision (a) of Section 451.

30 (4) The defendant proximately caused multiple structures to  
31 burn in any single violation of Section 451.

32 (5) The defendant committed arson as described in subdivision  
33 (a), (b), or (c) of Section 451 and the arson was caused by use of  
34 a device designed to accelerate the fire or delay ignition.

35 (b) The additional term specified in subdivision (a) shall not be  
36 imposed unless the existence of any fact required under this section  
37 shall be alleged in the accusatory pleading and either admitted by  
38 the defendant in open court or found to be true by the trier of fact.

39 (c) *Alternatively, on or after the operative date of an applicable*  
40 *rule or rules proposed by the California Public Safety Commission,*

1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 *SEC. 202. Section 451.5 of the Penal Code is amended to read:*

4 451.5. (a) Any person who willfully, maliciously, deliberately,  
5 with premeditation, and with intent to cause injury to one or more  
6 persons or to cause damage to property under circumstances likely  
7 to produce injury to one or more persons or to cause damage to  
8 one or more structures or inhabited dwellings, sets fire to, burns,  
9 or causes to be burned, or aids, counsels, or procures the burning  
10 of any residence, structure, forest land, or property is guilty of  
11 aggravated arson if one or more of the following aggravating  
12 factors exists:

13 (1) The defendant has been previously convicted of arson on  
14 one or more occasions within the past 10 years.

15 (2) (A) The fire caused property damage and other losses in  
16 excess of five million six hundred fifty thousand dollars  
17 (\$5,650,000).

18 (B) In calculating the total amount of property damage and other  
19 losses under subparagraph (A), the court shall consider the cost of  
20 fire suppression. It is the intent of the Legislature that this  
21 paragraph be reviewed within five years to consider the effects of  
22 inflation on the dollar amount stated herein. For that reason, this  
23 paragraph shall remain in effect until January 1, 2010, and as of  
24 that date is repealed, unless a later enacted statute, which is enacted  
25 before January 1, 2010, deletes or extends that date.

26 (3) The fire caused damage to, or the destruction of, five or  
27 more inhabited structures.

28 (b) Any person who is convicted under subdivision (a) shall be  
29 punished by imprisonment in the state prison for 10 years to life.

30 (c) Any person who is sentenced under subdivision (b) shall not  
31 be eligible for release on parole until 10 calendar years have  
32 elapsed.

33 *(d) Alternatively, on or after the operative date of an applicable*  
34 *rule or rules proposed by the California Public Safety Commission,*  
35 *a person who violates this section shall be punished as provided*  
36 *in the applicable sentencing rules.*

37 *SEC. 203. Section 452 of the Penal Code is amended to read:*

38 452. A person is guilty of unlawfully causing a fire when he  
39 recklessly sets fire to or burns or causes to be burned, any structure,  
40 forest land or property.



1 (a) Unlawfully causing a fire that causes great bodily injury is  
2 a felony punishable by imprisonment in the state prison for two,  
3 four or six years, or by imprisonment in the county jail for not  
4 more than one year, or by a fine, or by both ~~such~~ *that* imprisonment  
5 and fine.

6 (b) Unlawfully causing a fire that causes an inhabited structure  
7 or inhabited property to burn is a felony punishable by  
8 imprisonment in the state prison for two, three or four years, or by  
9 imprisonment in the county jail for not more than one year, or by  
10 a fine, or by both ~~such~~ *that* imprisonment and fine.

11 (c) Unlawfully causing a fire of a structure or forest land is a  
12 felony punishable by imprisonment in the state prison for 16  
13 months, two or three years, or by imprisonment in the county jail  
14 for not more than six months, or by a fine, or by both ~~such~~ *that*  
15 imprisonment and fine.

16 (d) Unlawfully causing a fire of property is a misdemeanor. For  
17 purposes of this paragraph, unlawfully causing a fire of property  
18 does not include one burning or causing to be burned his own  
19 personal property unless there is injury to another person or to  
20 another person's structure, forest land or property.

21 (e) In the case of any person convicted of violating this section  
22 while confined in a state prison, prison road camp, prison forestry  
23 camp, or other prison camp or prison farm, or while confined in a  
24 county jail while serving a term of imprisonment for a felony or  
25 misdemeanor conviction, any sentence imposed shall be  
26 consecutive to the sentence for which the person was then confined.

27 (f) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 *SEC. 204. Section 452.1 of the Penal Code is amended to read:*

32 452.1. (a) Notwithstanding any other law, any person who is  
33 convicted of a felony violation of Section 452 shall be punished  
34 by a one-, two-, or three-year enhancement for each of the  
35 following circumstances that is found to be true:

36 (1) The defendant has been previously convicted of a felony  
37 violation of Section 451 or 452.

38 (2) A firefighter, peace officer, or other emergency personnel  
39 suffered great bodily injury as a result of the offense. The additional  
40 term provided by this subdivision shall be imposed whenever

1 applicable, including any instance in which there is a violation of  
2 subdivision (a) of Section 452.

3 (3) The defendant proximately caused great bodily injury to  
4 more than one victim in any single violation of Section 452. The  
5 additional term provided by this subdivision shall be imposed  
6 whenever applicable, including any instance in which there is a  
7 violation of subdivision (a) of Section 452.

8 (4) The defendant proximately caused multiple structures to  
9 burn in any single violation of Section 452.

10 (b) The additional term specified in subdivision (a) of Section  
11 452.1 shall not be imposed unless the existence of any fact required  
12 under this section shall be alleged in the accusatory pleading and  
13 either admitted by the defendant in open court or found to be true  
14 by the trier of fact.

15 *(c) Alternatively, on or after the operative date of an applicable*  
16 *rule or rules proposed by the California Public Safety Commission,*  
17 *a person who violates this section shall be punished as provided*  
18 *in the applicable sentencing rules.*

19 SEC. 205. Section 453 of the Penal Code is amended to read:

20 453. (a) Every person who possesses, manufactures, or  
21 disposes of any flammable, or combustible material or substance,  
22 or any incendiary device in an arrangement or preparation, with  
23 intent to willfully and maliciously use this material, substance, or  
24 device to set fire to or burn any structure, forest land, or property,  
25 shall be punished by imprisonment in the state prison, or in a  
26 county jail, not exceeding one year.

27 *(b) Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 ~~(b)~~

32 (c) For the purposes of this section:

33 (1) "Disposes of" means to give, give away, loan, offer, offer  
34 for sale, sell, or transfer.

35 (2) "Incendiary device" means a device that is constructed or  
36 designed to start an incendiary fire by remote, delayed, or instant  
37 means, but no device commercially manufactured primarily for  
38 the purpose of illumination shall be deemed to be an incendiary  
39 device for the purposes of this section.

1 (3) “Incendiary fire” means a fire that is deliberately ignited  
2 under circumstances in which a person knows that the fire should  
3 not be ignited.

4 (e)

5 (d) Subdivision (a) does not prohibit the authorized use or  
6 possession of any material, substance or device described therein  
7 by a member of the armed forces of the United States or by  
8 firemen, police officers, peace officers, or law enforcement officers  
9 authorized by the properly constituted authorities; nor does that  
10 subdivision prohibit the use or possession of any material,  
11 substance or device described therein when used solely for  
12 scientific research or educational purposes, or for disposal of brush  
13 under permit as provided for in Section 4494 of the Public  
14 Resources Code, or for any other lawful burning. Subdivision (a)  
15 does not prohibit the manufacture or disposal of an incendiary  
16 device for the parties or purposes described in this subdivision.

17 *SEC. 206. Section 454 of the Penal Code is amended to read:*

18 454. (a) Every person who violates Section 451 or 452 during  
19 and within an area of any of the following, when proclaimed by  
20 the Governor, shall be punished by imprisonment in the state  
21 prison, as specified in subdivision (b):

22 (1) A state of insurrection pursuant to Section 143 of the Military  
23 and Veterans Code.

24 (2) A state of emergency pursuant to Section 8625 of the  
25 Government Code.

26 (b) Any person who is described in subdivision (a) and who  
27 violates subdivision (a), (b), or (c) of Section 451 shall be punished  
28 by imprisonment in the state prison for five, seven, or nine years.  
29 All other persons who are described in subdivision (a) shall be  
30 punished by imprisonment in the state prison for three, five, or  
31 seven years.

32 (c) Probation shall not be granted to any person who is convicted  
33 of violating this section, except in unusual cases where the interest  
34 of justice would best be served.

35 (d) *Alternatively, on or after the operative date of an applicable*  
36 *rule or rules proposed by the California Public Safety Commission,*  
37 *a person who violates this section shall be punished as provided*  
38 *in the applicable sentencing rules.*

39 *SEC. 207. Section 455 of the Penal Code is amended to read:*

1     455. (a) Any person who willfully and maliciously attempts  
2 to set fire to or attempts to burn or to aid, counsel or procure the  
3 burning of any structure, forest land or property, or who commits  
4 any act preliminary thereto, or in furtherance thereof, is punishable  
5 by imprisonment in the state prison for 16 months, two or three  
6 years.

7     (b) *Alternatively, on or after the operative date of an applicable*  
8 *rule or rules proposed by the California Public Safety Commission,*  
9 *a person who violates this section shall be punished as provided*  
10 *in the applicable sentencing rules.*

11     The  
12     (c) *The placing or distributing of any flammable, explosive or*  
13 *combustible material or substance, or any device in or about any*  
14 *structure, forest land or property in an arrangement or preparation*  
15 *with intent to eventually willfully and maliciously set fire to or*  
16 *burn same, or to procure the setting fire to or burning of the same*  
17 *shall, for the purposes of this act constitute an attempt to burn such*  
18 *that structure, forest land or property, for purposes of this section.*

19     SEC. 208. *Section 456 of the Penal Code is amended to read:*

20     456. (a) Upon conviction for any felony violation of this  
21 chapter, in addition to the penalty prescribed, the court may impose  
22 a fine not to exceed fifty thousand dollars (\$50,000) unless a greater  
23 amount is provided by law.

24     (b) When any person is convicted of a violation of any provision  
25 of this chapter and the reason he committed the violation was for  
26 pecuniary gain, in addition to the penalty prescribed and instead  
27 of the fine provided in subdivision (a), the court may impose a  
28 fine of twice the anticipated or actual gross gain.

29     (c) *Alternatively, on or after the operative date of an applicable*  
30 *rule or rules proposed by the California Public Safety Commission,*  
31 *the court may impose a fine as provided in the applicable*  
32 *sentencing rules.*

33     SEC. 209. *Section 461 of the Penal Code is amended to read:*

34     461. (a) ~~Burglary~~—*Except as specified in subdivision (b),*  
35 *burglary is punishable as follows:*

36     1.

37     (1) Burglary in the first degree: by imprisonment in the state  
38 prison for two, four, or six years.

39     2.

1 (2) (A) Burglary in the second degree: by imprisonment in the  
2 county jail not exceeding one year or in the state prison.

3 (b) *When a second degree burglary occurs at a commercial*  
4 *establishment during hours the establishment is open to the public,*  
5 *and it is not proven that the burglar had the intent to commit a*  
6 *grand theft or a felony unrelated to theft at the time of entry, then*  
7 *the burglary is punishable by imprisonment in a county jail for a*  
8 *period not to exceed six months.*

9 (c) *Alternatively, on or after the operative date of an applicable*  
10 *rule or rules proposed by the California Public Safety Commission,*  
11 *burglary shall be punished as provided in the applicable sentencing*  
12 *rules.*

13 SEC. 210. *Section 462 of the Penal Code is amended to read:*

14 462. (a) Except in unusual cases where the interests of justice  
15 would best be served if the person is granted probation, probation  
16 shall not be granted to any person who is convicted of a burglary  
17 of an inhabited dwelling house or trailer coach as defined in Section  
18 635 of the Vehicle Code, an inhabited floating home as defined in  
19 subdivision (d) of Section 18075.55 of the Health and Safety Code,  
20 or the inhabited portion of any other building.

21 (b) If the court grants probation under subdivision (a), it shall  
22 specify the reason or reasons for that order on the court record.

23 (c) *Alternatively, on or after the operative date of an applicable*  
24 *rule or rules proposed by the California Public Safety Commission,*  
25 *a person who is convicted of a burglary as specified in subdivision*  
26 *(a) shall be punished as provided in the applicable sentencing*  
27 *rules.*

28 SEC. 211. *Section 462.5 of the Penal Code is amended to read:*

29 462.5. (a) Except in unusual cases where the interests of justice  
30 would best be served if the person is granted probation, probation  
31 shall not be granted to any person who is convicted of a felony  
32 custodial institution burglary. In any case in which a person is  
33 convicted of a misdemeanor custodial institution burglary, such  
34 person shall be confined in the county jail for not less than 90 days  
35 nor more than one year except in unusual cases where the interests  
36 of justice would best be served by the granting of probation.

37 (b) As used in this section, “custodial institution burglary” shall  
38 mean a violation of Section 459 on the grounds of any jail or  
39 correctional institution with the intent to steal items to use or  
40 convert for use as weapons, escape tools, or intoxicating drugs.

1 (c) If the court grants probation under subdivision (a), it shall  
2 specify the reason or reasons for such order on the court record.

3 (d) Any person convicted of custodial institution burglary shall  
4 serve his or her sentence, including enhancements, consecutive to  
5 any other sentence in effect or pending. The felony sentence shall  
6 be calculated under Section 1170.1.

7 (e) *Alternatively, on or after the operative date of an applicable*  
8 *rule or rules proposed by the California Public Safety Commission,*  
9 *a person who violates this section shall be punished as provided*  
10 *in the applicable sentencing rules.*

11 SEC. 212. *Section 463 of the Penal Code is amended to read:*

12 463. (a) Every person who violates Section 459, punishable  
13 as a second-degree burglary pursuant to ~~subdivision 2~~ paragraph  
14 (2) of subdivision (a) of Section 461, *except as provided in*  
15 *subdivision (b) of Section 461*, during and within an affected county  
16 in a “state of emergency” or a “local emergency” resulting from  
17 an earthquake, fire, flood, riot, or other natural or manmade disaster  
18 shall be guilty of the crime of looting, punishable by imprisonment  
19 in a county jail for one year or in the state prison. Any person  
20 convicted under this subdivision who is eligible for probation and  
21 who is granted probation shall, as a condition thereof, be confined  
22 in a county jail for at least 180 days, except that the court may, in  
23 the case where the interest of justice would best be served, reduce  
24 or eliminate that mandatory jail sentence, if the court specifies on  
25 the record and enters into the minutes the circumstances indicating  
26 that the interest of justice would best be served by that disposition.  
27 In addition to whatever custody is ordered, the court, in its  
28 discretion, may require any person granted probation following  
29 conviction under this subdivision to serve up to 240 hours of  
30 community service in any program deemed appropriate by the  
31 court, including any program created to rebuild the community.

32 For purposes of this section, the fact that the structure entered  
33 has been damaged by the earthquake, fire, flood, or other natural  
34 or manmade disaster shall not, in and of itself, preclude conviction.

35 (b) Every person who commits the crime of grand theft, as  
36 defined in Section 487, except grand theft of a firearm, during and  
37 within an affected county in a “state of emergency” or a “local  
38 emergency” resulting from an earthquake, fire, flood, riot, or other  
39 natural or unnatural disaster shall be guilty of the crime of looting,  
40 punishable by imprisonment in a county jail for one year or in the

1 state prison. Every person who commits the crime of grand theft  
 2 of a firearm, as defined in Section 487, during and within an  
 3 affected county in a “state of emergency” or a “local emergency”  
 4 resulting from an earthquake, fire, flood, riot, or other natural or  
 5 unnatural disaster shall be guilty of the crime of looting, punishable  
 6 by imprisonment in the state prison, as set forth in subdivision (a)  
 7 of Section 489. Any person convicted under this subdivision who  
 8 is eligible for probation and who is granted probation shall, as a  
 9 condition thereof, be confined in a county jail for at least 180 days,  
 10 except that the court may, in the case where the interest of justice  
 11 would best be served, reduce or eliminate that mandatory jail  
 12 sentence, if the court specifies on the record and enters into the  
 13 minutes the circumstances indicating that the interest of justice  
 14 would best be served by that disposition. In addition to whatever  
 15 custody is ordered, the court, in its discretion, may require any  
 16 person granted probation following conviction under this  
 17 subdivision to serve up to 160 hours of community service in any  
 18 program deemed appropriate by the court, including any program  
 19 created to rebuild the community.

20 (c) Every person who commits the crime of petty theft, as  
 21 defined in Section 488, *or commits a burglary punishable pursuant*  
 22 *to subdivision (b) of Section 461*, during and within an affected  
 23 county in a “state of emergency” or a “local emergency” resulting  
 24 from an earthquake, fire, flood, riot, or other natural or manmade  
 25 disaster shall be guilty of a misdemeanor, punishable by  
 26 imprisonment in a county jail for six months. Any person convicted  
 27 under this subdivision who is eligible for probation and who is  
 28 granted probation shall, as a condition thereof, be confined in a  
 29 county jail for at least 90 days, except that the court may, in the  
 30 case where the interest of justice would best be served, reduce or  
 31 eliminate that mandatory minimum jail sentence, if the court  
 32 specifies on the record and enters into the minutes the  
 33 circumstances indicating that the interest of justice would best be  
 34 served by that disposition. In addition to whatever custody is  
 35 ordered, the court, in its discretion, may require any person granted  
 36 probation following conviction under this subdivision to serve up  
 37 to 80 hours of community service in any program deemed  
 38 appropriate by the court, including any program created to rebuild  
 39 the community.

1     (d) *Alternatively, on or after the operative date of an applicable*  
2     *rule or rules proposed by the California Public Safety Commission,*  
3     *a person who violates this section shall be punished as provided*  
4     *in the applicable sentencing rules.*

5     ~~(d)~~

6     (e) (1) For purposes of this section, “state of emergency” means  
7     conditions which, by reason of their magnitude, are, or are likely  
8     to be, beyond the control of the services, personnel, equipment,  
9     and facilities of any single county, city and county, or city and  
10    require the combined forces of a mutual aid region or regions to  
11    combat.

12    (2) For purposes of this section, “local emergency” means  
13    conditions which, by reason of their magnitude, are, or are likely  
14    to be, beyond the control of the services, personnel, equipment,  
15    and facilities of any single county, city and county, or city and  
16    require the combined forces of a mutual aid region or regions to  
17    combat.

18    (3) For purposes of this section, a “state of emergency” shall  
19    exist from the time of the proclamation of the condition of the  
20    emergency until terminated pursuant to Section 8629 of the  
21    Government Code. For purposes of this section only, a “local  
22    emergency” shall exist from the time of the proclamation of the  
23    condition of the emergency by the local governing body until  
24    terminated pursuant to Section 8630 of the Government Code.

25    (4) Consensual entry into a commercial structure with the intent  
26    to commit a violation of Section 470, 476, 476a, 484f, or 484g of  
27    the Penal Code, shall not be charged as a violation under this  
28    section.

29    SEC. 213. *Section 470a of the Penal Code is amended to read:*

30    470a. (a) Every person who alters, falsifies, forges, duplicates  
31    or in any manner reproduces or counterfeits any driver’s license  
32    or identification card issued by a governmental agency with the  
33    intent that ~~such~~ *the* driver’s license or identification card be used  
34    to facilitate the commission of any forgery, is punishable by  
35    imprisonment in the state prison, or by imprisonment in ~~the a~~  
36    county jail for not more than one year.

37    (b) *Alternatively, on or after the operative date of an applicable*  
38    *rule or rules proposed by the California Public Safety Commission,*  
39    *a person who violates this section shall be punished as provided*  
40    *in the applicable sentencing rules.*



SEC. 214. Section 470b of the Penal Code is amended to read:

470b. (a) Every person who displays or causes or permits to be displayed or has in his possession any driver's license or identification card of the type enumerated in Section 470a with the intent that ~~such~~ the driver's license or identification card be used to facilitate the commission of any forgery, is punishable by imprisonment in the state prison, or by imprisonment in ~~the a~~ county jail for not more than one year.

(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.

SEC. 215. Section 473 of the Penal Code is amended to read:

473. Forgery is punishable by imprisonment in the state prison, or by imprisonment in ~~the a~~ county jail for not more than one year or, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, is punishable as provided in the applicable sentencing rules.

SEC. 216. Section 474 of the Penal Code is amended to read:

474. (a) Every person who knowingly and willfully sends by telegraph or telephone to any person a false or forged message, purporting to be from a telegraph or telephone office, or from any other person, or who willfully delivers or causes to be delivered to any person ~~any such~~ a message falsely purporting to have been received by telegraph or telephone, or who furnishes, or conspires to furnish, or causes to be furnished to any agent, operator, or employee, to be sent by telegraph or telephone, or to be delivered, ~~any such~~ a message, knowing the same to be false or forged, with the intent to deceive, injure, or defraud another, is punishable by imprisonment in the state prison, or in ~~the a~~ county jail not exceeding one year, or by fine not exceeding ten thousand dollars (\$10,000), or by both ~~such~~ that fine and imprisonment.

(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.

SEC. 217. Section 476a of the Penal Code is amended to read:

476a. (a) Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers any

1 check, or draft or order upon any bank or depository, or person,  
2 or firm, or corporation, for the payment of money, knowing at the  
3 time of ~~such~~ *that* making, drawing, uttering, or delivering that the  
4 maker or drawer or the corporation has not sufficient funds in, or  
5 credit with ~~said~~ *the* bank or depository, or person, or firm, or  
6 corporation, for the payment of ~~such~~ *that* check, draft, or order  
7 and all other checks, drafts, or orders upon ~~such~~ funds then  
8 outstanding, in full upon its presentation, although no express  
9 representation is made with reference thereto, is punishable by  
10 imprisonment in ~~the~~ *a* county jail for not more than one year, ~~or~~  
11 in the state prison.

12 ~~(b) However, if the total amount of all such checks, drafts, or~~  
13 ~~orders that the defendant is charged with and convicted of making,~~  
14 ~~drawing, or uttering does not exceed two hundred dollars (\$200);~~  
15 ~~the offense is punishable only by imprisonment in the county jail~~  
16 ~~for not more than one year, except that this subdivision shall not~~  
17 ~~be applicable if the defendant has previously been convicted of a~~  
18 ~~violation of Section 470, 475, or 476, or of this section, or of the~~  
19 ~~crime of petty theft in a case in which defendant's offense was a~~  
20 ~~violation also of Section 470, 475, or 476 or of this section or if~~  
21 ~~the defendant has previously been convicted of any offense under~~  
22 ~~the laws of any other state or of the United States which, if~~  
23 ~~committed in this state, would have been punishable as a violation~~  
24 ~~of Section 470, 475 or 476 or of this section or if he has been so~~  
25 ~~convicted of the crime of petty theft in a case in which, if~~  
26 ~~defendant's offense had been committed in this state, it would~~  
27 ~~have been a violation also of Section 470, 475, or 476, or of this~~  
28 ~~section.~~

29 ~~(e)~~

30 ~~(b)~~ Where ~~such~~ *the* check, draft, or order is protested on the  
31 ground of insufficiency of funds or credit, the notice of protest  
32 ~~thereof~~ shall be admissible as proof of presentation, nonpayment  
33 and protest and shall be presumptive evidence of knowledge of  
34 insufficiency of funds or credit with ~~such~~ *the* bank or depository,  
35 or person, or firm, or corporation.

36 ~~(d)~~

37 ~~(c)~~ In any prosecution under this section involving two or more  
38 checks, drafts, or orders, it shall constitute prima facie evidence  
39 of the identity of the drawer of a check, draft, or order if *both of*  
40 *the following occur:*

(1) ~~At the time of the acceptance of such~~ *When the payee accepts the check, draft or order from the drawer by the payee there is obtained, he or she obtains* from the drawer the following information: name and residence of the drawer, business or mailing address, either a valid driver's license number or Department of Motor Vehicles identification card number, and the drawer's home or work phone number or place of employment. ~~Such~~ *That* information may be recorded on the check, draft, or order itself or may be retained on file by the payee and referred to on the check, draft, or order by identifying number or other similar means; ~~and~~.

(2) The person receiving the check, draft, or order witnesses the drawer's signature or endorsement, and, as evidence of that, initials the check, draft, or order at the time of receipt.

~~(e)~~

(d) The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or depository or person or firm or corporation for the payment of such check, draft or order.

~~(f)~~

(e) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.

~~(g)~~

(f) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(h)~~

(g) A sheriff's department, police department, or other law enforcement agency may collect a fee from the defendant for investigation, collection, and processing of checks referred to their agency for investigation of alleged violations of this section or Section 476.

The amount of the fee shall not exceed twenty-five dollars (\$25) for each bad check in addition to the amount of any bank charges incurred by the victim as a result of the alleged offense. If the sheriff's department, police department, or other law enforcement agency collects any fee for bank charges incurred by the victim pursuant to this section, that fee shall be paid to the victim for any

1 bank fees the victim may have been assessed. In no event shall  
2 reimbursement of the bank charge to the victim pursuant to this  
3 section exceed ten dollars (\$10) per check.

4 *SEC. 218. Section 478 of the Penal Code is amended to read:*

5 478. Counterfeiting is punishable by imprisonment in the state  
6 prison for two, three or four years *or, on or after the operative*  
7 *date of an applicable rule or rules proposed by the California*  
8 *Public Safety Commission, is punishable as provided in the*  
9 *applicable sentencing rules.*

10 *SEC. 219. Section 479 of the Penal Code is amended to read:*

11 479. (a) Every person who has in his possession, or receives  
12 for any other person, any counterfeit gold or silver coin of the  
13 species current in this state, or any counterfeit gold dust, gold or  
14 silver bullion or bars, lumps, pieces or nuggets, with the intention  
15 to sell, utter, put off or pass the same, or permits, causes or procures  
16 the same to be sold, uttered or passed, with intention to defraud  
17 any person, knowing the same to be counterfeit, is punishable by  
18 imprisonment in the state prison for two, three or four years.

19 (b) *Alternatively, on or after the operative date of an applicable*  
20 *rule or rules proposed by the California Public Safety Commission,*  
21 *a person who violates this section shall be punished as provided*  
22 *in the applicable sentencing rules.*

23 *SEC. 220. Section 481 of the Penal Code is amended to read:*

24 481. (a) Every person who counterfeits, forges, or alters any  
25 ticket, check, order, coupon, receipt for fare, or pass, issued by  
26 any railroad or steamship company, or by any lessee or manager  
27 thereof, designed to entitle the holder to ride in the cars or vessels  
28 of such company, or who utters, publishes, or puts into circulation,  
29 any such counterfeit or altered ticket, check, or order, coupon,  
30 receipt for fare, or pass, with intent to defraud any such railroad  
31 or steamship company, or any lessee thereof, or any other person,  
32 is punishable by imprisonment in the state prison, or in ~~the~~ a county  
33 jail; not exceeding one year, or by a fine not exceeding one  
34 thousand dollars, or by both ~~such~~ that imprisonment and fine.

35 (b) *Alternatively, on or after the operative date of an applicable*  
36 *rule or rules proposed by the California Public Safety Commission,*  
37 *a person who violates this section shall be punished as provided*  
38 *in the applicable sentencing rules.*

39 *SEC. 221. Section 481.1 of the Penal Code is amended to read:*

481.1. (a) Every person who counterfeits, forges, or alters any fare media designed to entitle the holder to a ride on vehicles of a public transportation system, as defined by Section 99211 of the Public Utilities Code, or on vehicles operated by entities subsidized by the Department of Transportation is punishable by imprisonment in a county jail, not exceeding one year, or in the state prison.

(b) Every person who knowingly possesses any counterfeit, forged, or altered fare media designed to entitle the holder to a ride on vehicles of a public transportation system, as defined by Section 99211 of the Public Utilities Code, or on vehicles operated by entities subsidized by the Department of Transportation, or who utters, publishes, or puts into circulation any fare media with intent to defraud is punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 222. Section 483.5 of the Penal Code is amended to read:

483.5. (a) No deceptive identification document shall be manufactured, sold, offered for sale, furnished, offered to be furnished, transported, offered to be transported, or imported or offered to be imported into this state unless there is diagonally across the face of the document, in not less than 14-point type and printed conspicuously on the document in permanent ink, the following statement:

NOT A GOVERNMENT DOCUMENT

and, also printed conspicuously on the document, the name of the manufacturer.

(b) No document-making device may be possessed with the intent that the device will be used to manufacture, alter, or authenticate a deceptive identification document.

(c) As used in this section, “deceptive identification document” means any document not issued by a governmental agency of this state, another state, the federal government, a foreign government, a political subdivision of a foreign government, an international government, or an international quasi-governmental organization,

1 which purports to be, or which might deceive an ordinary  
2 reasonable person into believing that it is, a document issued by  
3 such an agency, including, but not limited to, a driver's license,  
4 identification card, birth certificate, passport, or social security  
5 card.

6 (d) As used in this section, "document-making device" includes,  
7 but is not limited to, an implement, tool, equipment, impression,  
8 laminate, card, template, computer file, computer disk, electronic  
9 device, hologram, laminate machine or computer hardware or  
10 software.

11 (e) Any person who violates or proposes to violate this section  
12 may be enjoined by any court of competent jurisdiction. Actions  
13 for injunction under this section may be prosecuted by the Attorney  
14 General, any district attorney, or any city attorney prosecuting on  
15 behalf of the people of the State of California under Section  
16 41803.5 of the Government Code in this state in the name of the  
17 people of the State of California upon their own complaint or upon  
18 the complaint of any person.

19 (f) Any person who violates the provisions of subdivision (a)  
20 who knows or reasonably should know that the deceptive  
21 identification document will be used for fraudulent purposes is  
22 guilty of a crime, and upon conviction therefor, shall be punished  
23 by imprisonment in ~~the~~ a county jail not to exceed one year, or by  
24 imprisonment in the state prison. Any person who violates the  
25 provisions of subdivision (b) is guilty of a misdemeanor punishable  
26 by imprisonment in a county jail not exceeding one year, or by a  
27 fine not exceeding one thousand dollars (\$1,000), or by both  
28 imprisonment and a fine. Any document-making device may be  
29 seized by law enforcement and shall be forfeited to law  
30 enforcement or destroyed by order of the court upon a finding that  
31 the device was intended to be used to manufacture, alter, or  
32 authenticate a deceptive identification document. The court may  
33 make such a finding in the absence of a defendant for whom a  
34 bench warrant has been issued by the court.

35 (g) *Alternatively, on or after the operative date of an applicable*  
36 *rule or rules proposed by the California Public Safety Commission,*  
37 *a person who violates this section shall be punished as provided*  
38 *in the applicable sentencing rules.*

39 SEC. 223. Section 484b of the Penal Code is amended to read:

1 484b. (a) Any person who receives money for the purpose of  
 2 obtaining or paying for services, labor, materials or equipment and  
 3 willfully fails to apply such money for such purpose by either  
 4 willfully failing to complete the improvements for which funds  
 5 were provided or willfully failing to pay for services, labor,  
 6 materials or equipment provided incident to such construction,  
 7 and wrongfully diverts the funds to a use other than that for which  
 8 the funds were received, shall be guilty of a public offense and  
 9 shall be punishable by a fine not exceeding ten thousand dollars  
 10 (\$10,000), or by imprisonment in the state prison, or in ~~the~~ a county  
 11 jail not exceeding one year, or by both ~~such that~~ fine and ~~such that~~  
 12 imprisonment if the amount diverted is in excess of ~~one thousand~~  
 13 ~~dollars (\$1,000)~~ two thousand three hundred and fifty dollars  
 14 (\$2,350). If the amount diverted is less than ~~one thousand dollars~~  
 15 ~~(\$1,000)~~ or equal to two thousand three hundred and fifty dollars  
 16 (\$2,350), the person shall be guilty of a misdemeanor.

17 (b) *Alternatively, on or after the operative date of an applicable*  
 18 *rule or rules proposed by the California Public Safety Commission,*  
 19 *a person who violates this section shall be punished as provided*  
 20 *in the applicable sentencing rules.*

21 SEC. 224. *Section 484g of the Penal Code is amended to read:*

22 484g. Every person who, with the intent to defraud, (a) uses,  
 23 for the purpose of obtaining money, goods, services, or anything  
 24 else of value, an access card or access card account information  
 25 that has been altered, obtained, or retained in violation of Section  
 26 484e or 484f, or an access card which he or she knows is forged,  
 27 expired, or revoked, or (b) obtains money, goods, services, or  
 28 anything else of value by representing without the consent of the  
 29 cardholder that he or she is the holder of an access card and the  
 30 card has not in fact been issued, is guilty of theft. If the value of  
 31 all money, goods, services, and other things of value obtained in  
 32 violation of this section exceeds ~~four hundred dollars (\$400)~~ nine  
 33 *hundred fifty dollars (\$950)* in any consecutive six-month period,  
 34 then the same shall constitute grand theft.

35 SEC. 225. *Section 484h of the Penal Code is amended to read:*

36 484h. Every retailer or other person who, with intent to defraud:  
 37 (a) Furnishes money, goods, services or anything else of value  
 38 upon presentation of an access card obtained or retained in violation  
 39 of Section 484e or an access card which he or she knows is a  
 40 counterfeit access card or is forged, expired, or revoked, and who

1 receives any payment therefor, is guilty of theft. If the payment  
2 received by the retailer or other person for all money, goods,  
3 services, and other things of value furnished in violation of this  
4 section exceeds ~~four hundred dollars (\$400)~~ *nine hundred fifty*  
5 *dollars (\$950)* in any consecutive six-month period, then the same  
6 shall constitute grand theft.

7 (b) Presents for payment a sales slip or other evidence of an  
8 access card transaction, and receives payment therefor, without  
9 furnishing in the transaction money, goods, services, or anything  
10 else of value that is equal in value to the amount of the sales slip  
11 or other evidence of an access card transaction, is guilty of theft.  
12 If the difference between the value of all money, goods, services,  
13 and anything else of value actually furnished and the payment or  
14 payments received by the retailer or other person therefor upon  
15 presentation of a sales slip or other evidence of an access card  
16 transaction exceeds ~~four hundred dollars (\$400)~~ *nine hundred fifty*  
17 *dollars (\$950)* in any consecutive six-month period, then the same  
18 shall constitute grand theft.

19 *SEC. 226. Section 484i of the Penal Code is amended to read:*

20 484i. (a) Every person who possesses an incomplete access  
21 card, with intent to complete it without the consent of the issuer,  
22 is guilty of a misdemeanor.

23 (b) Every person who, with the intent to defraud, makes, alters,  
24 varies, changes, or modifies access card account information on  
25 any part of an access card, including information encoded in a  
26 magnetic stripe or other medium on the access card not directly  
27 readable by the human eye, or who authorizes or consents to  
28 alteration, variance, change, or modification of access card account  
29 information by another, in a manner that causes transactions  
30 initiated by that access card to be charged or billed to a person  
31 other than the cardholder to whom the access card was issued, is  
32 guilty of forgery.

33 (c) Every person who designs, makes, possesses, or traffics in  
34 card making equipment or incomplete access cards with the intent  
35 that the equipment or cards be used to make counterfeit access  
36 cards, is punishable by imprisonment in a county jail for not more  
37 than one year, or by imprisonment in the state prison.

38 (d) *Alternatively, on or after the operative date of an applicable*  
39 *rule or rules proposed by the California Public Safety Commission,*



1 *a person who violates this section shall be punished as provided*  
2 *in the applicable sentencing rules.*

3 *SEC. 227. Section 487 of the Penal Code is amended to read:*

4 487. Grand theft is theft committed in any of the following  
5 cases:

6 (a) When the money, labor, or real or personal property taken  
7 is of a value exceeding ~~four hundred dollars (\$400)~~ *two thousand*  
8 *five hundred dollars (\$2,500)*, except as provided in subdivision  
9 (b).

10 (b) Notwithstanding subdivision (a), grand theft is committed  
11 in any of the following cases:

12 (1) (A) When domestic fowls, avocados, olives, citrus or  
13 deciduous fruits, other fruits, vegetables, nuts, artichokes, or other  
14 farm crops are taken of a value exceeding ~~one hundred dollars~~  
15 ~~(\$100)~~ *two thousand five hundred dollars (\$2,500)*.

16 (B) For the purposes of establishing that the value of avocados  
17 or citrus fruit under this paragraph exceeds ~~one hundred dollars~~  
18 ~~(\$100)~~ *two thousand five hundred dollars (\$2,500)*, that value may  
19 be shown by the presentation of credible evidence which  
20 establishes that on the day of the theft avocados or citrus fruit of  
21 the same variety and weight exceeded ~~one hundred dollars (\$100)~~  
22 *two thousand five hundred dollars (\$2,500)* in wholesale value.

23 (2) When fish, shellfish, mollusks, crustaceans, kelp, algae, or  
24 other aquacultural products are taken from a commercial or  
25 research operation which is producing that product, of a value  
26 exceeding ~~one hundred dollars (\$100)~~ *two thousand five hundred*  
27 *dollars (\$2,500)*.

28 (3) Where the money, labor, or real or personal property is taken  
29 by a servant, agent, or employee from his or her principal or  
30 employer and aggregates ~~four hundred dollars (\$400)~~ *two thousand*  
31 *five hundred dollars (\$2,500)* or more in any 12 consecutive month  
32 period.

33 (4) *When an automobile, horse, mare, gelding, any bovine*  
34 *animal, any caprine animal, mule, jack, jenny, sheep, lamb, hog,*  
35 *sow, boar, gilt, barrow, or pig is taken and has a value exceeding*  
36 *two thousand five hundred dollars (\$2,500).*

37 (c) When the property is taken from the person of another *and*  
38 *has a value exceeding two thousand five hundred dollars (\$2,500).*

39 (d) When the property taken is ~~any of the following:~~ *a firearm.*

1     ~~(1) An automobile, horse, mare, gelding, any bovine animal,~~  
2     ~~any caprine animal, mule, jack, jenny, sheep, lamb, hog, sow, boar,~~  
3     ~~gilt, barrow, or pig.~~

4     ~~(2) A firearm.~~

5     (e) This section shall become operative on January 1, 1997.

6     SEC. 228. *Section 487b of the Penal Code is amended to read:*

7     487b. (a) Every person who converts real estate of the value  
8     ~~of one hundred dollars (\$100)~~ *two hundred and fifty dollars (\$250)*  
9     or more into personal property by severance from the realty of  
10    another, and with felonious intent to do so, steals, takes, and carries  
11    away ~~such~~ *that* property is guilty of grand theft and is punishable  
12    by imprisonment in the state prison.

13    (b) *Alternatively, on or after the operative date of an applicable*  
14    *rule or rules proposed by the California Public Safety Commission,*  
15    *a person who violates this section shall be punished as provided*  
16    *in the applicable sentencing rules.*

17    SEC. 229. *Section 487c of the Penal Code is amended to read:*

18    487c. (a) Every person who converts real estate of the value  
19    ~~of less than one hundred dollars (\$100)~~ *two hundred fifty dollars*  
20    ~~(\$250)~~ into personal property by severance from the realty of  
21    another, and with felonious intent to do so steals, takes, and carries  
22    away ~~such~~ *that* property is guilty of petty theft and is punishable  
23    by imprisonment in the county jail for not more than one year, or  
24    by a fine not exceeding one thousand dollars (\$1,000), or by both  
25    ~~such~~ *that* fine and imprisonment.

26    (b) *Alternatively, on or after the operative date of an applicable*  
27    *rule or rules proposed by the California Public Safety Commission,*  
28    *a person who violates this section shall be punished as provided*  
29    *in the applicable sentencing rules.*

30    SEC. 230. *Section 487d of the Penal Code is amended to read:*

31    487d. (a) Every person who feloniously steals, takes, and  
32    carries away, or attempts to take, steal, and carry from any mining  
33    claim, tunnel, sluice, undercurrent, riffle box, or sulfurate machine,  
34    another's gold dust, amalgam, or quicksilver is guilty of grand  
35    theft and is punishable by imprisonment in the state prison.

36    (b) *Alternatively, on or after the operative date of an applicable*  
37    *rule or rules proposed by the California Public Safety Commission,*  
38    *a person who violates this section shall be punished as provided*  
39    *in the applicable sentencing rules.*

40    SEC. 231. *Section 487e of the Penal Code is amended to read:*

1 487e. Every person who feloniously steals, takes, or carries  
2 away a dog of another which is of a value exceeding ~~four hundred~~  
3 ~~dollars (\$400)~~ *nine hundred fifty dollars (\$950)* is guilty of grand  
4 theft.

5 *SEC. 232. Section 487f of the Penal Code is amended to read:*

6 487f. Every person who feloniously steals, takes, or carries  
7 away a dog of another which is of a value not exceeding ~~four~~  
8 ~~hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* is guilty  
9 of petty theft.

10 *SEC. 233. Section 487g of the Penal Code is amended to read:*

11 487g. (a) Every person who steals or maliciously takes or  
12 carries away any animal of another for purposes of sale, medical  
13 research, slaughter, or other commercial use, or who knowingly,  
14 by any false representation or pretense, defrauds another person  
15 of any animal for purposes of sale, medical research, slaughter, or  
16 other commercial use is guilty of a public offense punishable by  
17 imprisonment in a county jail not exceeding one year or in the  
18 state prison.

19 (b) *Alternatively, on or after the operative date of an applicable*  
20 *rule or rules proposed by the California Public Safety Commission,*  
21 *a person who violates this section shall be punished as provided*  
22 *in the applicable sentencing rules.*

23 *SEC. 234. Section 487h of the Penal Code is amended to read:*

24 487h. (a) Every person who steals, takes, or carries away cargo  
25 of another, when the cargo taken is of a value exceeding ~~four~~  
26 ~~hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, except  
27 as provided in Sections 487, 487a, and 487d, is guilty of grand  
28 theft.

29 (b) For the purposes of this section, “cargo” means any goods,  
30 wares, products, or manufactured merchandise that has been loaded  
31 into a trailer, railcar, or cargo container, awaiting or in transit.

32 (c) This section shall remain in effect only until January 1,  
33 2010, and as of that date is repealed, unless a later enacted statute,  
34 that is enacted before January 1, 2010, deletes or extends that date.

35 *SEC. 235. Section 488 of the Penal Code is amended to read:*

36 488. Theft in other cases is petty theft, *unless the California*  
37 *Public Safety Commission adopts a sentencing rule that provides*  
38 *otherwise, in which case theft shall be punished as provided in the*  
39 *proposed applicable sentencing rule, on or after the operative date*  
40 *of that rule.*

1     *SEC. 236. Section 489 of the Penal Code is amended to read:*

2     489. Grand theft is punishable as follows:

3     (a) When the grand theft involves the theft of a firearm, by  
4 imprisonment in the state prison for 16 months, 2, or 3 years.

5     (b) In all other cases, by imprisonment in a county jail not  
6 exceeding one year or in the state prison.

7     (c) *Alternatively, on or after the operative date of an applicable*  
8 *rule or rules proposed by the California Public Safety Commission,*  
9 *grand theft shall be punished as provided in the applicable*  
10 *sentencing rules.*

11     *SEC. 237. Section 490 of the Penal Code is amended to read:*

12     490. Petty theft is punishable by fine not exceeding one  
13 thousand dollars (\$1,000), or by imprisonment in the county jail  
14 not exceeding six months, or both *or, on or after the operative*  
15 *date of an applicable rule or rules proposed by the California*  
16 *Public Safety Commission, petty theft shall be punished as provided*  
17 *in the applicable sentencing rules.*

18     *SEC. 238. Section 490.1 of the Penal Code is amended to read:*

19     490.1. (a) Petty theft, where the value of the money, labor,  
20 real or personal property taken is of a value which does not exceed  
21 fifty dollars (\$50), may be charged as a misdemeanor or an  
22 infraction, at the discretion of the prosecutor, provided that the  
23 person charged with the offense has no other theft or theft-related  
24 conviction.

25     (b) Any offense charged as an infraction under this section shall  
26 be subject to the provisions of subdivision (d) of Section 17 and  
27 Sections 19.6 and 19.7.

28     ~~A~~

29     (c) A violation which is an infraction under this section is  
30 punishable by a fine not exceeding two hundred fifty dollars  
31 (\$250).

32     (d) *Alternatively, on or after the operative date of an applicable*  
33 *rule or rules proposed by the California Public Safety Commission,*  
34 *petty theft may be charged and shall be punished as provided in*  
35 *the applicable sentencing rules.*

36     *SEC. 239. Section 490.5 of the Penal Code is amended to read:*

37     490.5. (a) (1) Upon a first conviction for petty theft involving  
38 merchandise taken from a merchant's premises or a book or other  
39 library materials taken from a library facility, a person shall be  
40 punished by a mandatory fine of not less than fifty dollars (\$50)

1 and not more than one thousand dollars (\$1,000) for each ~~such~~  
2 violation; and may also be punished by imprisonment in the county  
3 jail, not exceeding six months, or both ~~such that~~ fine and  
4 imprisonment.

5 (2) *Alternatively, on or after the operative date of an applicable*  
6 *rule or rules proposed by the California Public Safety Commission,*  
7 *a person who violates this section shall be punished as provided*  
8 *in the applicable sentencing rules.*

9 (b) When an unemancipated minor's willful conduct would  
10 constitute petty theft involving merchandise taken from a  
11 merchant's premises or a book or other library materials taken  
12 from a library facility, any merchant or library facility who has  
13 been injured by that conduct may bring a civil action against the  
14 parent or legal guardian having control and custody of the minor.  
15 For the purposes of those actions, the misconduct of the  
16 unemancipated minor shall be imputed to the parent or legal  
17 guardian having control and custody of the minor. The parent or  
18 legal guardian having control or custody of an unemancipated  
19 minor whose conduct violates this subdivision shall be jointly and  
20 severally liable with the minor to a merchant or to a library facility  
21 for damages of not less than fifty dollars (\$50) nor more than five  
22 hundred dollars (\$500), plus costs. In addition to the foregoing  
23 damages, the parent or legal guardian shall be jointly and severally  
24 liable with the minor to the merchant for the retail value of the  
25 merchandise if it is not recovered in a merchantable condition, or  
26 to a library facility for the fair market value of its book or other  
27 library materials. Recovery of these damages may be had in  
28 addition to, and is not limited by, any other provision of law which  
29 limits the liability of a parent or legal guardian for the tortious  
30 conduct of a minor. An action for recovery of damages, pursuant  
31 to this subdivision, may be brought in small claims court if the  
32 total damages do not exceed the jurisdictional limit of that court,  
33 or in any other appropriate court; however, total damages, including  
34 the value of the merchandise or book or other library materials,  
35 shall not exceed five hundred dollars (\$500) for each action brought  
36 under this section.

37 The provisions of this subdivision are in addition to other civil  
38 remedies and do not limit merchants or other persons to elect to  
39 pursue other civil remedies, except that the provisions of Section  
40 1714.1 of the Civil Code shall not apply herein.

(c) When an adult or emancipated minor has unlawfully taken merchandise from a merchant's premises, or a book or other library materials from a library facility, the adult or emancipated minor shall be liable to the merchant or library facility for damages of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), plus costs. In addition to the foregoing damages, the adult or emancipated minor shall be liable to the merchant for the retail value of the merchandise if it is not recovered in merchantable condition, or to a library facility for the fair market value of its book or other library materials. An action for recovery of damages, pursuant to this subdivision, may be brought in small claims court if the total damages do not exceed the jurisdictional limit of ~~such~~ *that* court, or in any other appropriate court. The provisions of this subdivision are in addition to other civil remedies and do not limit merchants or other persons to elect to pursue other civil remedies.

(d) In lieu of the fines prescribed by subdivision (a), any person may be required to perform public services designated by the court, ~~provided that in no event shall any such person~~ *however, no person* shall be required to perform less than the number of hours of ~~such~~ public service necessary to satisfy the fine assessed by the court as provided by subdivision (a) at the minimum wage prevailing in the state at the time of sentencing.

(e) All fines collected under this section shall be collected and distributed in accordance with Sections 1463 and 1463.1 of the Penal Code; ~~provided, however, that~~ *However*, a county may, by a majority vote of the members of its board of supervisors, allocate any amount up to, but not exceeding 50 percent of such fines to the county superintendent of schools for allocation to local school districts. The fines allocated shall be administered by the county superintendent of schools to finance public school programs, which provide counseling or other educational services designed to discourage shoplifting, theft, and burglary. Subject to rules and regulations as may be adopted by the Superintendent of Public Instruction, each county superintendent of schools shall allocate ~~such those~~ funds to school districts within the county which submit project applications designed to further the educational purposes of this section. The costs of administration of this section by each county superintendent of schools shall be paid from the funds allocated to the county superintendent of schools.

(f) (1) A merchant may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the merchant has probable cause to believe the person to be detained is attempting to unlawfully take or has unlawfully taken merchandise from the merchant's premises.

A theater owner may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the theater owner has probable cause to believe the person to be detained is attempting to operate a video recording device within the premises of a motion picture theater without the authority of the owner of the theater.

A person employed by a library facility may detain a person for a reasonable time for the purpose of conducting an investigation in a reasonable manner whenever the person employed by a library facility has probable cause to believe the person to be detained is attempting to unlawfully remove or has unlawfully removed books or library materials from the premises of the library facility.

(2) In making the detention, a merchant, theater owner, or a person employed by a library facility may use a reasonable amount of nondeadly force necessary to protect himself or herself and to prevent escape of the person detained or the loss of tangible or intangible property.

(3) During the period of detention, any items which a merchant or theater owner, or any items which a person employed by a library facility has probable cause to believe are unlawfully taken from the premises of the merchant or library facility, or recorded on theater premises, and which are in plain view may be examined by the merchant, theater owner, or person employed by a library facility for the purposes of ascertaining the ownership thereof.

(4) A merchant, theater owner, a person employed by a library facility, or an agent thereof, having probable cause to believe the person detained was attempting to unlawfully take or has taken any item from the premises, or was attempting to operate a video recording device within the premises of a motion picture theater without the authority of the owner of the theater, may request the person detained to voluntarily surrender the item or recording. ~~Should~~ *If* the person detained ~~refuse~~ *refuses* to surrender the recording or item of which there is probable cause to believe has been recorded on or unlawfully taken from the premises, or attempted to be recorded or unlawfully taken from the premises,

1 a limited and reasonable search may be conducted by those  
2 authorized to make the detention in order to recover the item. Only  
3 packages, shopping bags, handbags or other property in the  
4 immediate possession of the person detained, but not including  
5 any clothing worn by the person, may be searched pursuant to this  
6 subdivision. Upon surrender or discovery of the item, the person  
7 detained may also be requested, but may not be required, to provide  
8 adequate proof of his or her true identity.

9 (5) If any person admitted to a theater in which a motion picture  
10 is to be or is being exhibited, refuses or fails to give or surrender  
11 possession or to cease operation of any video recording device  
12 that the person has brought into or attempts to bring into that  
13 theater, then a theater owner ~~shall have~~ *has* the right to refuse  
14 admission to that person or request that the person leave the  
15 premises and shall thereupon offer to refund and, unless that offer  
16 is refused, refund to that person the price paid by that person for  
17 admission to that theater. If the person thereafter refuses to leave  
18 the theater or cease operation of the video recording device, then  
19 the person shall be deemed to be intentionally interfering with and  
20 obstructing those attempting to carry on a lawful business within  
21 the meaning of Section 602.1.

22 (6) A peace officer who accepts custody of a person arrested  
23 for an offense contained in this section may, subsequent to the  
24 arrest, search the person arrested and his or her immediate  
25 possessions for any item or items alleged to have been taken.

26 (7) In any civil action brought by any person resulting from a  
27 detention or arrest by a merchant, it shall be a defense to such  
28 action that the merchant detaining or arresting such person had  
29 probable cause to believe that the person had stolen or attempted  
30 to steal merchandise and that the merchant acted reasonably under  
31 all the circumstances.

32 In any civil action brought by any person resulting from a  
33 detention or arrest by a theater owner or person employed by a  
34 library facility, it shall be a defense to that action that the theater  
35 owner or person employed by a library facility detaining or  
36 arresting that person had probable cause to believe that the person  
37 was attempting to operate a video recording device within the  
38 premises of a motion picture theater without the authority of the  
39 owner of the theater or had stolen or attempted to steal books or



1 library materials and that the person employed by a library facility  
2 acted reasonably under all the circumstances.

3 (g) As used in this section:

4 (1) “Merchandise” means any personal property, capable of  
5 manual delivery, displayed, held or offered for retail sale by a  
6 merchant.

7 (2) “Merchant” means an owner or operator, and the agent,  
8 consignee, employee, lessee, or officer of an owner or operator,  
9 of any premises used for the retail purchase or sale of any personal  
10 property capable of manual delivery.

11 (3) “Theater owner” means an owner or operator, and the agent,  
12 employee, consignee, lessee, or officer of an owner or operator,  
13 of any premises used for the exhibition or performance of motion  
14 pictures to the general public.

15 (4) The terms “book or other library materials” include any  
16 book, plate, picture, photograph, engraving, painting, drawing,  
17 map, newspaper, magazine, pamphlet, broadside, manuscript,  
18 document, letter, public record, microform, sound recording,  
19 audiovisual material in any format, magnetic or other tape,  
20 electronic data-processing record, artifact, or other documentary,  
21 written or printed material regardless of physical form or  
22 characteristics, or any part thereof, belonging to, on loan to, or  
23 otherwise in the custody of a library facility.

24 (5) The term “library facility” includes any public library; any  
25 library of an educational, historical or eleemosynary institution,  
26 organization or society; any museum; any repository of public  
27 records.

28 (h) Any library facility shall post at its entrance and exit a  
29 conspicuous sign to read as follows:

30  
31 “IN ORDER TO PREVENT THE THEFT OF BOOKS AND  
32 LIBRARY MATERIALS, STATE LAW AUTHORIZES THE  
33 DETENTION FOR A REASONABLE PERIOD OF ANY  
34 PERSON USING THESE FACILITIES SUSPECTED OF  
35 COMMITTING “LIBRARY THEFT” (PENAL CODE SECTION  
36 490.5).”

37  
38 *SEC. 240. Section 490.7 of the Penal Code is amended to read:*

39 490.7. (a) The Legislature finds that free newspapers provide  
40 a key source of information to the public, in many cases providing

1 an important alternative to the news and ideas expressed in other  
2 local media sources. The Legislature further finds that the  
3 unauthorized taking of multiple copies of free newspapers, whether  
4 done to sell them to recycling centers, to injure a business  
5 competitor, to deprive others of the opportunity to read them, or  
6 for any other reason, injures the rights of readers, writers,  
7 publishers, and advertisers, and impoverishes the marketplace of  
8 ideas in California.

9 (b) No person shall take more than twenty-five (25) copies of  
10 the current issue of a free or complimentary newspaper if done  
11 with the intent to do one or more of the following:

12 (1) Recycle the newspapers for cash or other payment.

13 (2) Sell or barter the newspaper.

14 (3) Deprive others of the opportunity to read or enjoy the  
15 newspaper.

16 (4) Harm a business competitor.

17 (c) This section does not apply to the owner or operator of the  
18 newsrack in which the copies are placed, the owner or operator of  
19 the property on which the newsrack is placed, the publisher, the  
20 printer, the distributor, the deliverer of the newspaper, or to any  
21 advertiser in that issue, or to any other person who has the express  
22 permission to do so from any of these entities.

23 (d) Any newspaper publisher may provide express permission  
24 to take more than twenty-five (25) copies of the current issue of a  
25 free or complimentary newspaper by indicating on the newsrack  
26 or in the newspaper itself, that people may take a greater number  
27 of copies if they wish.

28 (e) A first violation of subdivision (b) shall be an infraction  
29 punishable by a fine not exceeding two hundred fifty dollars  
30 (\$250). A second or subsequent violation shall be punishable as  
31 an infraction or a misdemeanor. A misdemeanor conviction under  
32 this section is punishable by a fine not exceeding five hundred  
33 dollars (\$500), imprisonment of up to 10 days in a county jail, or  
34 by both that fine and imprisonment. The court may order  
35 community service in lieu of the punishment otherwise provided  
36 for an infraction or misdemeanor in the amount of 20 hours for an  
37 infraction, and 40 hours for a misdemeanor. A misdemeanor  
38 conviction under this section shall not constitute a conviction for  
39 petty theft.

(f) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

(f)

(g) This section shall not be construed to repeal, modify, or weaken any existing legal prohibitions against the taking of private property.

(g)

(h) For purposes of this section, an issue is current if no more than half of the period of time until the distribution of the next issue has passed.

*SEC. 241. Section 496 of the Penal Code is amended to read:*

496. (a) Every person who buys or receives any property that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be so stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any property from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in a ~~state prison, or in a county jail~~ for not more than one year. ~~However, if the district attorney or the grand jury determines that this action would be in the interests of justice, the district attorney or the grand jury, as the case may be, may, if the value of the property does not exceed four hundred dollars (\$400), specify in the accusatory pleading that the offense shall be a misdemeanor, punishable only by imprisonment in a county jail not exceeding one year.~~

A principal in the actual theft of the property may be convicted pursuant to this section. However, no person may be convicted both pursuant to this section and of the theft of the same property.

(b) Every swap meet vendor, as defined in Section 21661 of the Business and Professions Code, and every person whose principal business is dealing in, or collecting, merchandise or personal property, and every agent, employee, or representative of that person, who buys or receives any property of a value in excess of ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* that has been stolen or obtained in any manner constituting theft or extortion, under circumstances that should cause the person, agent, employee, or representative to make reasonable inquiry to ascertain that the person from whom the property was bought or received

1 had the legal right to sell or deliver it, without making a reasonable  
2 inquiry, shall be punished by imprisonment in ~~a state prison, or in~~  
3 a county jail for not more than one year.

4 Every swap meet vendor, as defined in Section 21661 of the  
5 Business and Professions Code, and every person whose principal  
6 business is dealing in, or collecting, merchandise or personal  
7 property, and every agent, employee, or representative of that  
8 person, who buys or receives any property of a value of ~~four~~  
9 ~~hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or less  
10 that has been stolen or obtained in any manner constituting theft  
11 or extortion, under circumstances that should cause the person,  
12 agent, employee, or representative to make reasonable inquiry to  
13 ascertain that the person from whom the property was bought or  
14 received had the legal right to sell or deliver it, without making a  
15 reasonable inquiry, shall be guilty of a misdemeanor.

16 (c) Any person who has been injured by a violation of  
17 subdivision (a) or (b) may bring an action for three times the  
18 amount of actual damages, if any, sustained by the plaintiff, costs  
19 of suit, and reasonable attorney's fees.

20 (d) Notwithstanding Section 664, any attempt to commit any  
21 act prohibited by this section, except an offense specified in the  
22 accusatory pleading as a misdemeanor, is punishable by  
23 imprisonment in ~~the state prison, or in~~ a county jail for not more  
24 than one year.

25 (e) *Alternatively, on or after the operative date of an applicable*  
26 *rule or rules proposed by the California Public Safety Commission,*  
27 *a person who violates this section shall be punished as provided*  
28 *in the applicable sentencing rules.*

29 SEC. 242. Section 496a of the Penal Code is amended to read:

30 496a. (a) Every person who, being a dealer in or collector of  
31 junk, metals or secondhand materials, or the agent, employee, or  
32 representative of ~~such~~ *that* dealer or collector, buys or receives  
33 any wire, cable, copper, lead, solder, mercury, iron or brass which  
34 he *or she* knows or reasonably should know is ordinarily used by  
35 or ordinarily belongs to a railroad or other transportation,  
36 telephone, telegraph, gas, water or electric light company or county,  
37 city, city and county or other political subdivision of this state  
38 engaged in furnishing public utility service without using due  
39 diligence to ascertain that the person selling or delivering the same  
40 has a legal right to do so, is guilty of criminally receiving such

property, and is punishable; by imprisonment in a state prison, or in a county jail for not more than one year, or by a fine of not more than two hundred fifty dollars (\$250), or by both ~~such~~ *that* fine and imprisonment.

(b) Any person buying or receiving material pursuant to subdivision (a) shall obtain evidence of his *or her* identity from the seller including, but not limited to, such person's full name, signature, address, driver's license number, vehicle license number, and the license number of the vehicle delivering the material.

The record of the transaction shall include an appropriate description of the material purchased and ~~such~~ *the* record shall be maintained pursuant to Section 21607 of the Business and Professions Code.

*(c) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 243. Section 496d of the Penal Code is amended to read:

496d. (a) Every person who buys or receives any motor vehicle, as defined in Section 415 of the Vehicle Code, any trailer, as defined in Section 630 of the Vehicle Code, any special construction equipment, as defined in Section 565 of the Vehicle Code, or any vessel, as defined in Section 21 of the Harbors and Navigation Code, that has been stolen or that has been obtained in any manner constituting theft or extortion, knowing the property to be stolen or obtained, or who conceals, sells, withholds, or aids in concealing, selling, or withholding any motor vehicle, trailer, special construction equipment, or vessel from the owner, knowing the property to be so stolen or obtained, shall be punished by imprisonment in the state prison for 16 months or two or three years or a fine of not more than ten thousand dollars (\$10,000), or both, or by imprisonment in a county jail not to exceed one year or a fine of not more than one thousand dollars (\$1,000), or both.

(b) For the purposes of this section, the terms "special construction equipment" and "vessel" are limited to motorized vehicles and vessels.

*(c) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

1     *SEC. 244. Section 498 of the Penal Code is amended to read:*

2     498. (a) The following definitions govern the construction of  
3 this section:

4     (1) “Person” means any individual, or any partnership, firm,  
5 association, corporation, limited liability company, or other legal  
6 entity.

7     (2) “Utility” means any electrical, gas, or water corporation as  
8 those terms are defined in the Public Utilities Code, and electrical,  
9 gas, or water systems operated by any political subdivision.

10    (3) “Customer” means the person in whose name utility service  
11 is provided.

12    (4) “Utility service” means the provision of electricity, gas,  
13 water, or any other service provided by the utility for compensation.

14    (5) “Divert” means to change the intended course or path of  
15 electricity, gas, or water without the authorization or consent of  
16 the utility.

17    (6) “Tamper” means to rearrange, injure, alter, interfere with,  
18 or otherwise prevent from performing a normal or customary  
19 function.

20    (7) “Reconnection” means the reconnection of utility service  
21 by a customer or other person after service has been lawfully  
22 disconnected by the utility.

23    (b) Any person who, with intent to obtain for himself or herself  
24 utility services without paying the full lawful charge therefor, or  
25 with intent to enable another person to do so, or with intent to  
26 deprive any utility of any part of the full lawful charge for utility  
27 services it provides, commits, authorizes, solicits, aids, or abets  
28 any of the following shall be guilty of a misdemeanor:

29     (1) Diverts or causes to be diverted utility services, by any means  
30 ~~whatsoever~~.

31     (2) Prevents any utility meter, or other device used in  
32 determining the charge for utility services, from accurately  
33 performing its measuring function by tampering or by any other  
34 means.

35     (3) Tampers with any property owned by or used by the utility  
36 to provide utility services.

37     (4) Makes or causes to be made any connection with or  
38 reconnection with property owned or used by the utility to provide  
39 utility services without the authorization or consent of the utility.

(5) Uses or receives the direct benefit of all or a portion of utility services with knowledge or reason to believe that the diversion, tampering, or unauthorized connection existed at the time of that use, or that the use or receipt was otherwise without the authorization or consent of the utility.

(c) In any prosecution under this section, the presence of any of the following objects, circumstances, or conditions on premises controlled by the customer or by the person using or receiving the direct benefit of all or a portion of utility services obtained in violation of this section shall permit an inference that the customer or person intended to and did violate this section:

(1) Any instrument, apparatus, or device primarily designed to be used to obtain utility services without paying the full lawful charge therefor.

(2) Any meter that has been altered, tampered with, or bypassed so as to cause no measurement or inaccurate measurement of utility services.

(d) If the value of all utility services obtained in violation of this section totals more than ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or if the defendant has previously been convicted of an offense under this section or any former section which would be an offense under this section, or of an offense under the laws of another state or of the United States which would have been an offense under this section if committed in this state, then the violation is punishable by imprisonment in ~~the~~ *a* county jail for not more than one year, or in the state prison.

*(e) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~

(f) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state.

*SEC. 245. Section 499 of the Penal Code is amended to read:*

499. (a) Any person who, having been convicted of a previous violation of Section 10851 of the Vehicle Code, or of subdivision (d) of Section 487, involving a vehicle or vessel, and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for the offense, is subsequently

1 convicted of a violation of Section 499b, involving a vehicle or  
2 vessel, is punishable for the subsequent offense by imprisonment  
3 in ~~the a~~ county jail not exceeding one year or the state prison for  
4 16 months, two, or three years.

5 (b) Any person convicted of a violation of Section 499b, who  
6 has been previously convicted under charges separately brought  
7 and tried two or more times of a violation of Section 499b, all such  
8 violations involving a vehicle or vessel, and who has been  
9 imprisoned ~~therefor~~ *therefor* as a condition of probation or  
10 otherwise at least once, is punishable by imprisonment in ~~the a~~  
11 county jail for not more than one year or in the state prison for 16  
12 months, two, or three years.

13 ~~(c) This section shall become operative on January 1, 1997.~~  
14 *Alternatively, on or after the operative date of an applicable rule*  
15 *or rules proposed by the California Public Safety Commission, a*  
16 *person who violates this section shall be punished as provided in*  
17 *the applicable sentencing rules.*

18 SEC. 246. Section 499b of the Penal Code is amended to read:

19 499b. (a) Any person who ~~shall~~, without the permission of the  
20 owner thereof, ~~take~~ *takes* any bicycle for the purpose of temporarily  
21 using or operating the same, is guilty of a misdemeanor, and shall  
22 be ~~punishable~~ *punished* by a fine not exceeding four hundred  
23 dollars (\$400), or by imprisonment in a county jail not exceeding  
24 three months, or by both that fine and imprisonment.

25 (b) Any person who ~~shall~~, without the permission of the owner  
26 thereof, ~~take~~ *takes* any vessel for the purpose of temporarily using  
27 or operating the same, is guilty of a misdemeanor, and shall be  
28 ~~punishable~~ *punished* by a fine not exceeding one thousand dollars  
29 (\$1,000), or by imprisonment in a county jail not exceeding one  
30 year, or by both that fine and imprisonment.

31 *(c) Alternatively, on or after the operative date of an applicable*  
32 *rule or rules proposed by the California Public Safety Commission,*  
33 *a person who violates this section shall be punished as provided*  
34 *in the applicable sentencing rules.*

35 SEC. 247. Section 499c of the Penal Code is amended to read:

36 499c. (a) As used in this section:

37 (1) "Access" means to approach, a way or means of approaching,  
38 nearing, admittance to, including to instruct, communicate with,  
39 store information in, or retrieve information from a computer  
40 system or computer network.



1 (2) “Article” means any object, material, device, or substance  
2 or copy thereof, including any writing, record, recording, drawing,  
3 sample, specimen, prototype, model, photograph, micro-organism,  
4 blueprint, map, or tangible representation of a computer program  
5 or information, including both human and computer readable  
6 information and information while in transit.

7 (3) “Benefit” means gain or advantage, or anything regarded  
8 by the beneficiary as gain or advantage, including benefit to any  
9 other person or entity in whose welfare he or she is interested.

10 (4) “Computer system” means a machine or collection of  
11 machines, one or more of which contain computer programs and  
12 information, that performs functions, including, but not limited to,  
13 logic, arithmetic, information storage and retrieval,  
14 communications, and control.

15 (5) “Computer network” means an interconnection of two or  
16 more computer systems.

17 (6) “Computer program” means an ordered set of instructions  
18 or statements, and related information that, when automatically  
19 executed in actual or modified form in a computer system, causes  
20 it to perform specified functions.

21 (7) “Copy” means any facsimile, replica, photograph or other  
22 reproduction of an article, and any note, drawing or sketch made  
23 of or from an article.

24 (8) “Representing” means describing, depicting, containing,  
25 constituting, reflecting or recording.

26 (9) “Trade secret” means information, including a formula,  
27 pattern, compilation, program, device, method, technique, or  
28 process, that:

29 (A) Derives independent economic value, actual or potential,  
30 from not being generally known to the public or to other persons  
31 who can obtain economic value from its disclosure or use; and

32 (B) Is the subject of efforts that are reasonable under the  
33 circumstances to maintain its secrecy.

34 (b) Every person is guilty of theft who, with intent to deprive  
35 or withhold the control of a trade secret from its owner, or with  
36 an intent to appropriate a trade secret to his or her own use or to  
37 the use of another, does any of the following:

38 (1) Steals, takes, carries away, or uses without authorization, a  
39 trade secret.

1 (2) Fraudulently appropriates any article representing a trade  
2 secret entrusted to him or her.

3 (3) Having unlawfully obtained access to the article, without  
4 authority makes or causes to be made a copy of any article  
5 representing a trade secret.

6 (4) Having obtained access to the article through a relationship  
7 of trust and confidence, without authority and in breach of the  
8 obligations created by that relationship, makes or causes to be  
9 made, directly from and in the presence of the article, a copy of  
10 any article representing a trade secret.

11 (c) Every person who promises, offers or gives, or conspires to  
12 promise or offer to give, to any present or former agent, employee  
13 or servant of another, a benefit as an inducement, bribe or reward  
14 for conveying, delivering or otherwise making available an article  
15 representing a trade secret owned by his or her present or former  
16 principal, employer or master, to any person not authorized by the  
17 owner to receive or acquire the trade secret and every present or  
18 former agent, employee, or servant, who solicits, accepts, receives  
19 or takes a benefit as an inducement, bribe or reward for conveying,  
20 delivering or otherwise making available an article representing a  
21 trade secret owned by his or her present or former principal,  
22 employer or master, to any person not authorized by the owner to  
23 receive or acquire the trade secret, shall be punished by  
24 imprisonment in the state prison, or in a county jail not exceeding  
25 one year, or by a fine not exceeding five thousand dollars (\$5,000),  
26 or by both that fine and imprisonment.

27 (d) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 ~~(d)~~

32 (e) In a prosecution for a violation of this section, it shall be no  
33 defense that the person returned or intended to return the article.

34 SEC. 248. *Section 499d of the Penal Code is amended to read:*

35 499d. (a) Any person who operates or takes an aircraft not his  
36 own, without the consent of the owner thereof, and with intent to  
37 either permanently or temporarily deprive the owner thereof of his  
38 title to or possession of ~~such~~ *that* vehicle, whether with or without  
39 intent to steal the same, or any person who is a party or accessory  
40 to or an accomplice in any operation or unauthorized taking or

stealing is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison, or in the county jail for not more than one year or by a fine of not more than ten thousand dollars (\$10,000) or by both ~~such~~ *that* fine and imprisonment.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 249. Section 500 of the Penal Code is amended to read:

500. (a) Any person who receives money for the actual or purported purpose of transmitting the same or its equivalent to foreign countries as specified in Section 1800.5 of the Financial Code who fails to do at least one of the following acts unless otherwise instructed by the customer is guilty of a misdemeanor or felony as set forth in subdivision (b):

(1) Forward the money as represented to the customer within 10 days of receipt of the funds.

(2) Give instructions within 10 days of receipt of the customer's funds, committing equivalent funds to the person designated by the customer.

(3) Refund to the customer any money not forwarded as represented within 10 days of the customer's written request for a refund pursuant to subdivision (a) of Section 1810.5 of the Financial Code.

(b) (1) If the total value of the funds received from the customer is less than ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, the offense set forth in subdivision (a) is punishable by imprisonment in ~~the~~ *a* county jail not exceeding one year or by a fine not exceeding one thousand dollars (\$1,000), or by both ~~that~~ imprisonment and fine.

(2) If the total value of the money received from the customer is ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or more, or if the total value of all moneys received by the person from different customers is ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or more, and the receipts were part of a common scheme or plan, the offense set forth in subdivision (a) is punishable by imprisonment in the state prison for 16 months, 2, or 3 years, by a fine not exceeding ten thousand dollars (\$10,000), or by both ~~that~~ imprisonment and fine.

1     (c) *Alternatively, on or after the operative date of an applicable*  
2     *rule or rules proposed by the California Public Safety Commission,*  
3     *a person who violates this section shall be punished as provided*  
4     *in the applicable sentencing rules.*

5     SEC. 250. *Section 502 of the Penal Code is amended to read:*

6     502. (a) It is the intent of the Legislature in enacting this  
7     section to expand the degree of protection afforded to individuals,  
8     businesses, and governmental agencies from tampering,  
9     interference, damage, and unauthorized access to lawfully created  
10    computer data and computer systems. The Legislature finds and  
11    declares that the proliferation of computer technology has resulted  
12    in a concomitant proliferation of computer crime and other forms  
13    of unauthorized access to computers, computer systems, and  
14    computer data.

15    The Legislature further finds and declares that protection of the  
16    integrity of all types and forms of lawfully created computers,  
17    computer systems, and computer data is vital to the protection of  
18    the privacy of individuals as well as to the well-being of financial  
19    institutions, business concerns, governmental agencies, and others  
20    within this state that lawfully utilize those computers, computer  
21    systems, and data.

22    (b) For the purposes of this section, the following terms have  
23    the following meanings:

24    (1) "Access" means to gain entry to, instruct, or communicate  
25    with the logical, arithmetical, or memory function resources of a  
26    computer, computer system, or computer network.

27    (2) "Computer network" means any system that provides  
28    communications between one or more computer systems and  
29    input/output devices including, but not limited to, display terminals  
30    and printers connected by telecommunication facilities.

31    (3) "Computer program or software" means a set of instructions  
32    or statements, and related data, that when executed in actual or  
33    modified form, cause a computer, computer system, or computer  
34    network to perform specified functions.

35    (4) "Computer services" includes, but is not limited to, computer  
36    time, data processing, or storage functions, or other uses of a  
37    computer, computer system, or computer network.

38    (5) "Computer system" means a device or collection of devices,  
39    including support devices and excluding calculators that are not  
40    programmable and capable of being used in conjunction with

1 external files, one or more of which contain computer programs,  
2 electronic instructions, input data, and output data, that performs  
3 functions including, but not limited to, logic, arithmetic, data  
4 storage and retrieval, communication, and control.

5 (6) “Data” means a representation of information, knowledge,  
6 facts, concepts, computer software, computer programs or  
7 instructions. Data may be in any form, in storage media, or as  
8 stored in the memory of the computer or in transit or presented on  
9 a display device.

10 (7) “Supporting documentation” includes, but is not limited to,  
11 all information, in any form, pertaining to the design, construction,  
12 classification, implementation, use, or modification of a computer,  
13 computer system, computer network, computer program, or  
14 computer software, which information is not generally available  
15 to the public and is necessary for the operation of a computer,  
16 computer system, computer network, computer program, or  
17 computer software.

18 (8) “Injury” means any alteration, deletion, damage, or  
19 destruction of a computer system, computer network, computer  
20 program, or data caused by the access, or the denial of access to  
21 legitimate users of a computer system, network, or program.

22 (9) “Victim expenditure” means any expenditure reasonably  
23 and necessarily incurred by the owner or lessee to verify that a  
24 computer system, computer network, computer program, or data  
25 was or was not altered, deleted, damaged, or destroyed by the  
26 access.

27 (10) “Computer contaminant” means any set of computer  
28 instructions that are designed to modify, damage, destroy, record,  
29 or transmit information within a computer, computer system, or  
30 computer network without the intent or permission of the owner  
31 of the information. They include, but are not limited to, a group  
32 of computer instructions commonly called viruses or worms, that  
33 are self-replicating or self-propagating and are designed to  
34 contaminate other computer programs or computer data, consume  
35 computer resources, modify, destroy, record, or transmit data, or  
36 in some other fashion usurp the normal operation of the computer,  
37 computer system, or computer network.

38 (11) “Internet domain name” means a globally unique,  
39 hierarchical reference to an Internet host or service, assigned  
40 through centralized Internet naming authorities, comprising a series

1 of character strings separated by periods, with the rightmost  
2 character string specifying the top of the hierarchy.

3 (c) Except as provided in subdivision (h), any person who  
4 commits any of the following acts is guilty of a public offense:

5 (1) Knowingly accesses and without permission alters, damages,  
6 deletes, destroys, or otherwise uses any data, computer, computer  
7 system, or computer network in order to either (A) devise or  
8 execute any scheme or artifice to defraud, deceive, or extort, or  
9 (B) wrongfully control or obtain money, property, or data.

10 (2) Knowingly accesses and without permission takes, copies,  
11 or makes use of any data from a computer, computer system, or  
12 computer network, or takes or copies any supporting  
13 documentation, whether existing or residing internal or external  
14 to a computer, computer system, or computer network.

15 (3) Knowingly and without permission uses or causes to be used  
16 computer services.

17 (4) Knowingly accesses and without permission adds, alters,  
18 damages, deletes, or destroys any data, computer software, or  
19 computer programs which reside or exist internal or external to a  
20 computer, computer system, or computer network.

21 (5) Knowingly and without permission disrupts or causes the  
22 disruption of computer services or denies or causes the denial of  
23 computer services to an authorized user of a computer, computer  
24 system, or computer network.

25 (6) Knowingly and without permission provides or assists in  
26 providing a means of accessing a computer, computer system, or  
27 computer network in violation of this section.

28 (7) Knowingly and without permission accesses or causes to be  
29 accessed any computer, computer system, or computer network.

30 (8) Knowingly introduces any computer contaminant into any  
31 computer, computer system, or computer network.

32 (9) Knowingly and without permission uses the Internet domain  
33 name of another individual, corporation, or entity in connection  
34 with the sending of one or more electronic mail messages, and  
35 thereby damages or causes damage to a computer, computer  
36 system, or computer network.

37 (d) (1) Any person who violates any of the provisions of  
38 paragraph (1), (2), (4), or (5) of subdivision (c) is punishable by  
39 a fine not exceeding ten thousand dollars (\$10,000), or by  
40 imprisonment in the state prison for 16 months, or two or three

1 years, or by both that fine and imprisonment, or by a fine not  
2 exceeding five thousand dollars (\$5,000), or by imprisonment in  
3 a county jail not exceeding one year, or by both that fine and  
4 imprisonment.

5 (2) Any person who violates paragraph (3) of subdivision (c)  
6 is punishable as follows:

7 (A) For the first violation that does not result in injury, and  
8 where the value of the computer services used does not exceed  
9 ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, by  
10 a fine not exceeding five thousand dollars (\$5,000), or by  
11 imprisonment in a county jail not exceeding one year, or by both  
12 that fine and imprisonment.

13 (B) For any violation that results in a victim expenditure in an  
14 amount greater than five thousand dollars (\$5,000) or in an injury,  
15 or if the value of the computer services used exceeds ~~four hundred~~  
16 ~~dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, or for any second  
17 or subsequent violation, by a fine not exceeding ten thousand  
18 dollars (\$10,000), or by imprisonment in the state prison for 16  
19 months, or two or three years, or by both that fine and  
20 imprisonment, or by a fine not exceeding five thousand dollars  
21 (\$5,000), or by imprisonment in a county jail not exceeding one  
22 year, or by both that fine and imprisonment.

23 (3) Any person who violates paragraph (6) or (7) of subdivision  
24 (c) is punishable as follows:

25 (A) For a first violation that does not result in injury, an  
26 infraction punishable by a fine not exceeding one thousand dollars  
27 (\$1,000).

28 (B) For any violation that results in a victim expenditure in an  
29 amount not greater than five thousand dollars (\$5,000), or for a  
30 second or subsequent violation, by a fine not exceeding five  
31 thousand dollars (\$5,000), or by imprisonment in a county jail not  
32 exceeding one year, or by both that fine and imprisonment.

33 (C) For any violation that results in a victim expenditure in an  
34 amount greater than five thousand dollars (\$5,000), by a fine not  
35 exceeding ten thousand dollars (\$10,000), or by imprisonment in  
36 the state prison for 16 months, or two or three years, or by both  
37 that fine and imprisonment, or by a fine not exceeding five  
38 thousand dollars (\$5,000), or by imprisonment in a county jail not  
39 exceeding one year, or by both that fine and imprisonment.

(4) Any person who violates paragraph (8) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, a misdemeanor punishable by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in a county jail not exceeding one year, or in the state prison, or by both that fine and imprisonment.

(5) Any person who violates paragraph (9) of subdivision (c) is punishable as follows:

(A) For a first violation that does not result in injury, an infraction punishable by a fine not one thousand dollars.

(B) For any violation that results in injury, or for a second or subsequent violation, by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment.

*(e) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~

(f) (1) In addition to any other civil remedy available, the owner or lessee of the computer, computer system, computer network, computer program, or data who suffers damage or loss by reason of a violation of any of the provisions of subdivision (c) may bring a civil action against the violator for compensatory damages and injunctive relief or other equitable relief. Compensatory damages shall include any expenditure reasonably and necessarily incurred by the owner or lessee to verify that a computer system, computer network, computer program, or data was or was not altered, damaged, or deleted by the access. For the purposes of actions authorized by this subdivision, the conduct of an unemancipated minor shall be imputed to the parent or legal guardian having control or custody of the minor, pursuant to the provisions of Section 1714.1 of the Civil Code.

(2) In any action brought pursuant to this subdivision the court may award reasonable attorney's fees.



(3) A community college, state university, or academic institution accredited in this state is required to include computer-related crimes as a specific violation of college or university student conduct policies and regulations that may subject a student to disciplinary sanctions up to and including dismissal from the academic institution. This paragraph shall not apply to the University of California unless the Board of Regents adopts a resolution to that effect.

(4) In any action brought pursuant to this subdivision for a willful violation of the provisions of subdivision (c), where it is proved by clear and convincing evidence that a defendant has been guilty of oppression, fraud, or malice as defined in subdivision (c) of Section 3294 of the Civil Code, the court may additionally award punitive or exemplary damages.

(5) No action may be brought pursuant to this subdivision unless it is initiated within three years of the date of the act complained of, or the date of the discovery of the damage, whichever is later.

~~(f)~~

(g) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction, nor shall it make illegal any employee labor relations activities that are within the scope and protection of state or federal labor laws.

~~(g)~~

(h) Any computer, computer system, computer network, or any software or data, owned by the defendant, that is used during the commission of any public offense described in subdivision (c) or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of subdivision (c) shall be subject to forfeiture, as specified in Section 502.01.

~~(h)~~

(i) (1) Subdivision (c) does not apply to punish any acts which are committed by a person within the scope of his or her lawful employment. For purposes of this section, a person acts within the scope of his or her employment when he or she performs acts which are reasonably necessary to the performance of his or her work assignment.

(2) Paragraph (3) of subdivision (c) does not apply to penalize any acts committed by a person acting outside of his or her lawful

1 employment, provided that the employee's activities do not cause  
2 an injury, as defined in paragraph (8) of subdivision (b), to the  
3 employer or another, or provided that the value of supplies or  
4 computer services, as defined in paragraph (4) of subdivision (b),  
5 which are used does not exceed an accumulated total of ~~one~~  
6 ~~hundred dollars (\$100)~~ *two hundred and fifty dollars (\$250)*.

7 ~~(i)~~

8 (j) No activity exempted from prosecution under paragraph (2)  
9 of subdivision ~~(h)~~ (i) which incidentally violates paragraph (2),  
10 (4), or (7) of subdivision (c) shall be prosecuted under those  
11 paragraphs.

12 ~~(j)~~

13 (k) For purposes of bringing a civil or a criminal action under  
14 this section, a person who causes, by any means, the access of a  
15 computer, computer system, or computer network in one  
16 jurisdiction from another jurisdiction is deemed to have personally  
17 accessed the computer, computer system, or computer network in  
18 each jurisdiction.

19 ~~(k)~~

20 (l) In determining the terms and conditions applicable to a person  
21 convicted of a violation of this section the court shall consider the  
22 following:

23 (1) The court shall consider prohibitions on access to and use  
24 of computers.

25 (2) Except as otherwise required by law, the court shall consider  
26 alternate sentencing, including community service, if the defendant  
27 shows remorse and recognition of the wrongdoing, and an  
28 inclination not to repeat the offense.

29 *SEC. 251. Section 502.7 of the Penal Code is amended to read:*

30 502.7. (a) Any person who, knowingly, willfully, and with  
31 intent to defraud a person providing telephone or telegraph service,  
32 avoids or attempts to avoid, or aids, abets or causes another to  
33 avoid the lawful charge, in whole or in part, for telephone or  
34 telegraph service by any of the following means is guilty of a  
35 misdemeanor or a felony, except as provided in subdivision (g):

36 (1) By charging the service to an existing telephone number or  
37 credit card number without the authority of the subscriber thereto  
38 or the lawful holder thereof.

39 (2) By charging the service to a nonexistent telephone number  
40 or credit card number, or to a number associated with telephone

1 service which is suspended or terminated, or to a revoked or  
2 canceled (as distinguished from expired) credit card number, notice  
3 of the suspension, termination, revocation, or cancellation of the  
4 telephone service or credit card having been given to the subscriber  
5 thereto or the holder thereof.

6 (3) By use of a code, prearranged scheme, or other similar  
7 stratagem or device whereby the person, in effect, sends or receives  
8 information.

9 (4) By rearranging, tampering with, or making connection with  
10 telephone or telegraph facilities or equipment, whether physically,  
11 electrically, acoustically, inductively, or otherwise, or by using  
12 telephone or telegraph service with knowledge or reason to believe  
13 that the rearrangement, tampering, or connection existed at the  
14 time of the use.

15 (5) By using any other deception, false pretense, trick, scheme,  
16 device, conspiracy, or means, including the fraudulent use of false,  
17 altered, or stolen identification.

18 (b) Any person who does either of the following is guilty of a  
19 misdemeanor or a felony, except as provided in subdivision (g):

20 (1) Makes, possesses, sells, gives, or otherwise transfers to  
21 another, or offers or advertises any instrument, apparatus, or device  
22 with intent to use it or with knowledge or reason to believe it is  
23 intended to be used to avoid any lawful telephone or telegraph toll  
24 charge or to conceal the existence or place of origin or destination  
25 of any telephone or telegraph message.

26 (2) Sells, gives, or otherwise transfers to another or offers, or  
27 advertises plans or instructions for making or assembling an  
28 instrument, apparatus, or device described in paragraph (1) of this  
29 subdivision with knowledge or reason to believe that they may be  
30 used to make or assemble the instrument, apparatus, or device.

31 (c) Any person who publishes the number or code of an existing,  
32 canceled, revoked, expired, or nonexistent credit card, or the  
33 numbering or coding which is employed in the issuance of credit  
34 cards, with the intent that it be used or with knowledge or reason  
35 to believe that it will be used to avoid the payment of any lawful  
36 telephone or telegraph toll charge is guilty of a misdemeanor.  
37 Subdivision (g) shall not apply to this subdivision. As used in this  
38 section, "publishes" means the communication of information to  
39 any one or more persons, either orally, in person or by telephone,  
40 radio, or television, or electronic means, including, but not limited

1 to, a bulletin board system, or in a writing of any kind, including  
2 without limitation a letter or memorandum, circular or handbill,  
3 newspaper, or magazine article, or book.

4 (d) Any person who is the ~~issuee~~*issue* of a calling card, credit  
5 card, calling code, or any other means or device for the legal use  
6 of telecommunications services and who receives anything of value  
7 for knowingly allowing another person to use the means or device  
8 in order to fraudulently obtain telecommunications services is  
9 guilty of a misdemeanor or a felony, except as provided in  
10 subdivision (g).

11 (e) Subdivision (a) applies when the telephone or telegraph  
12 communication involved either originates or terminates, or both  
13 originates and terminates, in this state, or when the charges for  
14 service would have been billable, in normal course, by a person  
15 providing telephone or telegraph service in this state, but for the  
16 fact that the charge for service was avoided, or attempted to be  
17 avoided, by one or more of the means set forth in subdivision (a).

18 (f) Jurisdiction of an offense under this section is in the  
19 jurisdictional territory where the telephone call or telegram  
20 involved in the offense originates or where it terminates, or the  
21 jurisdictional territory to which the bill for the service is sent or  
22 would have been sent but for the fact that the service was obtained  
23 or attempted to be obtained by one or more of the means set forth  
24 in subdivision (a).

25 (g) Theft of any telephone or telegraph services under this  
26 section by a person who has a prior misdemeanor or felony  
27 conviction for theft of services under this section within the past  
28 five years, is a felony.

29 (h) Any person or telephone company defrauded by any acts  
30 prohibited under this section shall be entitled to restitution for the  
31 entire amount of the charges avoided from any person or persons  
32 convicted under this section.

33 (i) Any instrument, apparatus, device, plans, instructions, or  
34 written publication described in subdivision (b) or (c) may be  
35 seized under warrant or incident to a lawful arrest, and, upon the  
36 conviction of a person for a violation of subdivision (a), (b), or  
37 (c), the instrument, apparatus, device, plans, instructions, or written  
38 publication may be destroyed as contraband by the sheriff of the  
39 county in which the person was convicted or turned over to the

1 person providing telephone or telegraph service in the territory in  
2 which it was seized.

3 (j) Any computer, computer system, computer network, or any  
4 software or data, owned by the defendant, which is used during  
5 the commission of any public offense described in this section or  
6 any computer, owned by the defendant, which is used as a  
7 repository for the storage of software or data illegally obtained in  
8 violation of this section shall be subject to forfeiture.

9 (k) *Alternatively, on or after the operative date of an applicable*  
10 *rule or rules proposed by the California Public Safety Commission,*  
11 *a person who violates this section shall be punished as provided*  
12 *in the applicable sentencing rules.*

13 SEC. 252. Section 502.8 of the Penal Code is amended to read:  
14 502.8. (a) Any person who knowingly advertises illegal  
15 telecommunications equipment is guilty of a misdemeanor.

16 (b) Any person who possesses or uses illegal  
17 telecommunications equipment intending to avoid the payment of  
18 any lawful charge for telecommunications service or to facilitate  
19 other criminal conduct is guilty of a misdemeanor.

20 (c) Any person found guilty of violating subdivision (b), who  
21 has previously been convicted of the same offense, shall be guilty  
22 of a felony, punishable by imprisonment in state prison, a fine of  
23 up to fifty thousand dollars (\$50,000), or both.

24 (d) Any person who possesses illegal telecommunications  
25 equipment with intent to sell, transfer, or furnish or offer to sell,  
26 transfer, or furnish the equipment to another, intending to avoid  
27 the payment of any lawful charge for telecommunications service  
28 or to facilitate other criminal conduct is guilty of a misdemeanor  
29 punishable by one year in a county jail or imprisonment in state  
30 prison or a fine of up to ten thousand dollars (\$10,000), or both.

31 (e) Any person who possesses 10 or more items of illegal  
32 telecommunications equipment with intent to sell or offer to sell  
33 the equipment to another, intending to avoid payment of any lawful  
34 charge for telecommunications service or to facilitate other criminal  
35 conduct, is guilty of a felony, punishable by imprisonment in state  
36 prison, a fine of up to fifty thousand dollars (\$50,000), or both.

37 (f) Any person who manufactures 10 or more items of illegal  
38 telecommunications equipment with intent to sell or offer to sell  
39 the equipment to another, intending to avoid the payment of any  
40 lawful charge for telecommunications service or to facilitate other

1 criminal conduct is guilty of a felony punishable by imprisonment  
2 in state prison or a fine of up to fifty thousand dollars (\$50,000),  
3 or both.

4 (g) For purposes of this section, “illegal telecommunications  
5 equipment” means equipment that operates to evade the lawful  
6 charges for any telecommunications service;—~~surreptitiously~~  
7 *surreptitiously* intercept electronic serial numbers or mobile  
8 identification numbers; alter electronic serial numbers; circumvent  
9 efforts to confirm legitimate access to a telecommunications  
10 account; conceal from any telecommunications service provider  
11 or lawful authority the existence, place of origin, or destination of  
12 any telecommunication; or otherwise facilitate any other criminal  
13 conduct. “Illegal telecommunications equipment” includes, but is  
14 not limited to, any unauthorized electronic serial number or mobile  
15 identification number, whether incorporated into a wireless  
16 telephone or other device or otherwise. Items specified in this  
17 paragraph shall be considered illegal telecommunications  
18 equipment notwithstanding any statement or disclaimer that the  
19 items are intended for educational, instructional, or similar  
20 purposes.

21 (h) (1) In the event that a person violates the provisions of this  
22 section with the intent to avoid the payment of any lawful charge  
23 for telecommunications service to a telecommunications service  
24 provider, the court shall order the person to pay restitution to the  
25 telecommunications service provider in an amount that is the  
26 greater of the following:

27 (A) Five thousand dollars (\$5,000).

28 (B) Three times the amount of actual damages, if any, sustained  
29 by the telecommunications service provider, plus reasonable  
30 attorney fees.

31 (2) It is not a necessary prerequisite to an order of restitution  
32 under this section that the telecommunications service provider  
33 has suffered, or be threatened with, actual damages.

34 (i) *Alternatively, on or after the operative date of an applicable*  
35 *rule or rules proposed by the California Public Safety Commission,*  
36 *a person who violates this section shall be punished as provided*  
37 *in the applicable sentencing rules.*

38 SEC. 253. Section 506b of the Penal Code is amended to read:

39 506b. (a) Any person who violates Section 2985.3 or 2985.4  
40 of the Civil Code, relating to real property sales contracts, is guilty

1 of a public offense punishable by a fine not exceeding ten thousand  
2 dollars (\$10,000), or by imprisonment in the state prison, or in ~~the~~  
3 a county jail not exceeding one year, or by both ~~such that~~ fine and  
4 imprisonment.

5 *(b) Alternatively, on or after the operative date of an applicable*  
6 *rule or rules proposed by the California Public Safety Commission,*  
7 *a person who violates this section shall be punished as provided*  
8 *in the applicable sentencing rules.*

9 SEC. 254. Section 520 of the Penal Code is amended to read:

10 520. (a) Every person who extorts any money or other property  
11 from another, under circumstances not amounting to robbery or  
12 carjacking, by means of force, or any threat, such as is mentioned  
13 in Section 519, shall be punished by imprisonment in the state  
14 prison for two, three or four years.

15 *(b) Alternatively, on or after the operative date of an applicable*  
16 *rule or rules proposed by the California Public Safety Commission,*  
17 *a person who violates this section shall be punished as provided*  
18 *in the applicable sentencing rules.*

19 SEC. 255. Section 524 of the Penal Code is amended to read:

20 524. (a) Every person who attempts, by means of any threat,  
21 such as is specified in Section 519 ~~of this code~~, to extort money  
22 or other property from another is punishable by imprisonment in  
23 the county jail not longer than one year or in the state prison or by  
24 fine not exceeding ten thousand dollars (\$10,000), or by both ~~such~~  
25 *that* fine and imprisonment.

26 *(b) Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates this section shall be punished as provided*  
29 *in the applicable sentencing rules.*

30 SEC. 256. Section 529a of the Penal Code is amended to read:

31 529a. (a) Every person who manufactures, produces, sells,  
32 offers, or transfers to another any document purporting to be either  
33 a certificate of birth or certificate of baptism, knowing ~~such that~~  
34 document to be false or counterfeit and with the intent to deceive,  
35 is guilty of a crime, and upon conviction therefor, shall be punished  
36 by imprisonment in ~~the~~ a county jail not to exceed one year, or by  
37 imprisonment in the state prison. Every person who offers, displays,  
38 or has in his or her possession any false or counterfeit certificate  
39 of birth or certificate of baptism, or any genuine certificate of birth  
40 which describes a person then living or deceased, with intent to

1 represent himself or herself as another or to conceal his or her true  
2 identity, is guilty of a crime, and upon conviction therefor, shall  
3 be punished by imprisonment in ~~the~~ a county jail not to exceed  
4 one year.

5 (b) *Alternatively, on or after the operative date of an applicable*  
6 *rule or rules proposed by the California Public Safety Commission,*  
7 *a person who violates this section shall be punished as provided*  
8 *in the applicable sentencing rules.*

9 SEC. 257. Section 530.5 of the Penal Code is amended to read:

10 530.5. (a) Every person who willfully obtains personal  
11 identifying information, as defined in subdivision (b) of Section  
12 530.55, of another person, and uses that information for any  
13 unlawful purpose, including to obtain, or attempt to obtain, credit,  
14 goods, services, real property, or medical information without the  
15 consent of that person, is guilty of a public offense, and upon  
16 conviction therefor, shall be punished by a fine, by imprisonment  
17 in a county jail not to exceed one year, or by both a fine and  
18 imprisonment, or by imprisonment in the state prison.

19 (b) In any case in which a person willfully obtains personal  
20 identifying information of another person, uses that information  
21 to commit a crime in addition to a violation of subdivision (a), and  
22 is convicted of that crime, the court records shall reflect that the  
23 person whose identity was falsely used to commit the crime did  
24 not commit the crime.

25 (c) (1) Every person who, with the intent to defraud, acquires  
26 or retains possession of the personal identifying information, as  
27 defined in subdivision (b) of Section 530.55, of another person is  
28 guilty of a public offense, and upon conviction therefor, shall be  
29 punished by a fine, by imprisonment in a county jail not to exceed  
30 one year, or by both a fine and imprisonment.

31 (2) Every person who, with the intent to defraud, acquires or  
32 retains possession of the personal identifying information, as  
33 defined in subdivision (b) of Section 530.55, of another person,  
34 and who has previously been convicted of a violation of this  
35 section, upon conviction therefor shall be punished by a fine, by  
36 imprisonment in a county jail not to exceed one year, or by both  
37 a fine and imprisonment, or by imprisonment in the state prison.

38 (3) Every person who, with the intent to defraud, acquires or  
39 retains possession of the personal identifying information, as  
40 defined in subdivision (b) of Section 530.55, of 10 or more other



persons is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

(d) (1) Every person who, with the intent to defraud, sells, transfers, or conveys the personal identifying information, as defined in subdivision (b) of Section 530.55, of another person is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment, or by imprisonment in the state prison.

(2) Every person who, with actual knowledge that the personal identifying information, as defined in subdivision (b) of Section 530.55, of a specific person will be used to commit a violation of subdivision (a), sells, transfers, or conveys that same personal identifying information is guilty of a public offense, and upon conviction therefor, shall be punished by a fine, by imprisonment in the state prison, or by both a fine and imprisonment.

(e) Every person who commits mail theft, as defined in Section 1708 of Title 18 of the United States Code, is guilty of a public offense, and upon conviction therefor shall be punished by a fine, by imprisonment in a county jail not to exceed one year, or by both a fine and imprisonment. Prosecution under this subdivision shall not limit or preclude prosecution under any other provision of law, including, but not limited to, subdivisions (a) to (c), inclusive, of this section.

(f) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(f)~~

(g) An interactive computer service or access software provider, as defined in subsection (f) of Section 230 of Title 47 of the United States Code, shall not be liable under this section unless the service or provider acquires, transfers, sells, conveys, or retains possession of personal information with the intent to defraud.

SEC. 258. *Section 532a of the Penal Code is amended to read:*

532a. (1) Any person who shall knowingly make or cause to be made, either directly or indirectly or through any agency whatsoever, any false statement in writing, with intent that it shall

1 be relied upon, respecting the financial condition, or means or  
2 ability to pay, of himself *or herself*, or any other person, firm, or  
3 corporation; in whom he *or she* is interested, or for whom he *or*  
4 *she* is acting, for the purpose of procuring in any form whatsoever,  
5 either the delivery of personal property, the payment of cash, the  
6 making of a loan or credit, the extension of a credit, the execution  
7 of a contract of guaranty or suretyship, the discount of an account  
8 receivable, or the making, acceptance, discount, sale or indorsement  
9 of a bill of exchange, or promissory note, for the benefit of either  
10 himself *or herself* or of such person, firm, or corporation shall be  
11 guilty of a public offense.

12 (2) Any person who, knowing that a false statement in writing  
13 has been made; respecting the financial condition or means or  
14 ability to pay; of himself *or herself*, or a person, firm, or  
15 corporation in which he *or she* is interested, or for whom he *or*  
16 *she* is acting, procures, upon the faith thereof, for the benefit either  
17 of himself *or herself*, or of such person, firm, or corporation, either  
18 or any of the things of benefit mentioned in the first subdivision  
19 of this section shall be guilty of a public offense.

20 (3) Any person who, knowing that a statement in writing has  
21 been made; respecting the financial condition or means or ability  
22 to pay of himself *or herself* or a person, firm, or corporation, in  
23 which he *or she* is interested, or for whom he *or she* is acting,  
24 represents on a later day in writing that the statement theretofore  
25 made, if then again made on said day, would be then true, when  
26 in fact, said statement if then made would be false, and procures  
27 upon the faith thereof, for the benefit either of himself *or herself*  
28 or of such person, firm, or corporation either or any of the things  
29 of benefit mentioned in the first subdivision of this section shall  
30 be guilty of a public offense.

31 (4) Any person committing a public offense under subdivision  
32 (1), (2), or (3) shall be guilty of a misdemeanor, punishable by a  
33 fine of not more than one thousand dollars (\$1,000), or by  
34 imprisonment in ~~the~~ a county jail for not more than six months,  
35 or by both ~~such~~ that fine and imprisonment. Any person who  
36 violates the provisions of subdivision (1), (2), or (3), by using a  
37 fictitious name, social security number, business name, or business  
38 address, or by falsely representing himself or herself to be another  
39 person or another business, is guilty of a felony and is punishable  
40 by a fine not exceeding five thousand dollars (\$5,000) or by

imprisonment in the state prison, or by both such fine and imprisonment, or by a fine not exceeding two thousand five hundred dollars (\$2,500) or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

(5) This section shall not be construed to preclude the applicability of any other provision of the criminal law of this state which applies or may apply to any transaction.

(6) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 259. *Section 535 of the Penal Code is amended to read:*

535. (a) Every person who obtains any money or property from another, or obtains the signature of another to any written instrument, the false making of which would be forgery, by means of any false or fraudulent sale of property or pretended property, by auction, or by any of the practices known as mock auctions, is punishable by imprisonment in the state prison, or in ~~the~~ a county jail not exceeding one year, or by fine not exceeding two thousand dollars (\$2,000), or by both ~~such~~ that fine and imprisonment, and, in addition, is disqualified for a period of three years from acting as an auctioneer in this state.

(b) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 260. *Section 537 of the Penal Code is amended to read:*

537. (a) Any person who obtains any food, fuel, services, or accommodations at a hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, ski area, or public or private campground, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground by the use of any false pretense, or who, after obtaining credit, food, fuel, services, or accommodations, at an hotel, inn, restaurant, boardinghouse, lodginghouse, apartment house, bungalow court, motel, marina, marine facility, autocamp, or public or private campground, absconds, or surreptitiously, or

1 by force, menace, or threats, removes any part of his or her baggage  
2 therefrom with the intent not to pay for his or her food or  
3 accommodations is guilty of a public offense punishable as follows:

4 (1) If the value of the credit, food, fuel, services, or  
5 accommodations is ~~four hundred dollars (\$400)~~ *nine hundred fifty*  
6 *dollars (\$950)* or less, by a fine not exceeding one thousand dollars  
7 (\$1,000) or by imprisonment in the county jail for a term not  
8 exceeding six months, or both.

9 (2) If the value of the credit, food, fuel, services, or  
10 accommodations is greater than ~~four hundred dollars (\$400)~~ *nine*  
11 *hundred fifty dollars (\$950)*, by imprisonment in ~~the a~~ county jail  
12 for a term of not more than one year, or in the state prison.

13 (b) Any person who uses or attempts to use ski area facilities  
14 for which payment is required without paying as required, or who  
15 resells a ski lift ticket to another when the resale is not authorized  
16 by the proprietor, is guilty of an infraction.

17 (c) Evidence that a person left the premises of such an hotel,  
18 inn, restaurant, boardinghouse, lodginghouse, apartment house,  
19 bungalow court, motel, marina, marine facility, autocamp, ski area,  
20 or public or private campground, without paying or offering to  
21 pay for such food, fuel, services, use of facilities, or  
22 accommodation, or that the person, without authorization from the  
23 proprietor, resold his or her ski lift ticket to another person after  
24 making use of such facilities, shall be prima facie evidence of the  
25 following:

26 (1) That the person obtained such food, fuel, services, use of  
27 facilities or accommodations with intent to defraud the proprietor  
28 or manager.

29 (2) That, if, after obtaining the credit, food, fuel, services, or  
30 accommodations, the person absconded, or surreptitiously, or by  
31 force, menace, or threats, removed part of his or her baggage  
32 therefrom, the person did so with the intent not to pay for the credit,  
33 food, fuel, services, or accommodations.

34 (d) *Alternatively, on or after the operative date of an applicable*  
35 *rule or rules proposed by the California Public Safety Commission,*  
36 *a person who violates this section shall be punished as provided*  
37 *in the applicable sentencing rules.*

38 *SEC. 261. Section 537e of the Penal Code is amended to read:*

39 537e. (a) Any person who knowingly buys, sells, receives,  
40 disposes of, conceals, or has in his or her possession any personal

property from which the manufacturer's serial number, identification number, electronic serial number, or any other distinguishing number or identification mark has been removed, defaced, covered, altered, or destroyed, is guilty of a public offense, punishable as follows:

(1) If the value of the property does not exceed ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, by imprisonment in a county jail not exceeding six months.

(2) If the value of the property exceeds ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, by imprisonment in a county jail not exceeding one year.

(3) If the property is an integrated computer chip or panel of a value of four hundred dollars (\$400) or more, by imprisonment in the state prison for 16 months, or 2 or 3 years or by imprisonment in a county jail not exceeding one year.

~~For~~

(b) For purposes of this subdivision, "personal property" includes, but is not limited to, the following:

(1) Any television, radio, recorder, phonograph, telephone, piano, or any other musical instrument or sound equipment.

(2) Any washing machine, sewing machine, vacuum cleaner, or other household appliance or furnishings.

(3) Any typewriter, adding machine, dictaphone, or any other office equipment or furnishings.

(4) Any computer, printed circuit, integrated chip or panel, or other part of a computer.

(5) Any tool or similar device, including any technical or scientific equipment.

(6) Any bicycle, exercise equipment, or any other entertainment or recreational equipment.

(7) Any electrical or mechanical equipment, contrivance, material, or piece of apparatus or equipment.

(8) Any clock, watch, watch case, or watch movement.

(9) Any vehicle or vessel, or any component part thereof.

~~(b)~~

(c) When property described in subdivision (a) comes into the custody of a peace officer it shall become subject to the provision of Chapter 12 (commencing with Section 1407) of Title 10 of Part 2, relating to the disposal of stolen or embezzled property. Property subject to this section shall be considered stolen or embezzled

1 property for the purposes of that chapter, and prior to being  
2 disposed of, shall have an identification mark imbedded or  
3 engraved in, or permanently affixed to it.

4 ~~(e)~~

5 (d) This section does not apply to those cases or instances where  
6 any of the changes or alterations enumerated in subdivision (a)  
7 have been customarily made or done as an established practice in  
8 the ordinary and regular conduct of business, by the original  
9 manufacturer, or by his or her duly appointed direct representative,  
10 or under specific authorization from the original manufacturer.

11 *(e) Alternatively, on or after the operative date of an applicable*  
12 *rule or rules proposed by the California Public Safety Commission,*  
13 *a person who violates this section shall be punished as provided*  
14 *in the applicable sentencing rules.*

15 SEC. 262. Section 538.5 of the Penal Code is amended to read:

16 538.5. (a) Every person who transmits or causes to be  
17 transmitted by means of wire, radio, or television communication  
18 any words, sounds, writings, signs, signals, or pictures for the  
19 purpose of furthering or executing a scheme or artifice to obtain,  
20 from a public utility, confidential, privileged, or proprietary  
21 information, trade secrets, trade lists, customer records, billing  
22 records, customer credit data, or accounting data by means of false  
23 or fraudulent pretenses, representations, personations, or promises  
24 is guilty of an offense punishable by imprisonment in the state  
25 prison, or by imprisonment in the a county jail not exceeding one  
26 year.

27 (b) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 SEC. 263. Section 549 of the Penal Code is amended to read:

32 549. (a) Any firm, corporation, partnership, or association, or  
33 any person acting in his or her individual capacity, or in his or her  
34 capacity as a public or private employee, who solicits, accepts, or  
35 refers any business to or from any individual or entity with the  
36 knowledge that, or with reckless disregard for whether, the  
37 individual or entity for or from whom the solicitation or referral  
38 is made, or the individual or entity who is solicited or referred,  
39 intends to violate Section 550 of this code or Section 1871.4 of  
40 the Insurance Code is guilty of a crime, punishable upon a first

1 conviction by imprisonment in ~~the~~ a county jail for not more than  
2 one year or by imprisonment in the state prison for 16 months, two  
3 years, or three years, or by a fine not exceeding fifty thousand  
4 dollars (\$50,000) or double the amount of the fraud, whichever is  
5 greater, or by both that imprisonment and fine. A second or  
6 subsequent conviction is punishable by imprisonment in the state  
7 prison or by imprisonment in the state prison and a fine of fifty  
8 thousand dollars (\$50,000). Restitution shall be ordered, including  
9 restitution for any medical evaluation or treatment services obtained  
10 or provided. The court shall determine the amount of restitution  
11 and the person or persons to whom the restitution shall be paid.

12 *(b) Alternatively, on or after the operative date of an applicable*  
13 *rule or rules proposed by the California Public Safety Commission,*  
14 *a person who violates this section shall be punished as provided*  
15 *in the applicable sentencing rules.*

16 SEC. 264. Section 550 of the Penal Code is amended to read:

17 550. (a) It is unlawful to do any of the following, or to aid,  
18 abet, solicit, or conspire with any person to do any of the following:

19 (1) Knowingly present or cause to be presented any false or  
20 fraudulent claim for the payment of a loss or injury, including  
21 payment of a loss or injury under a contract of insurance.

22 (2) Knowingly present multiple claims for the same loss or  
23 injury, including presentation of multiple claims to more than one  
24 insurer, with an intent to defraud.

25 (3) Knowingly cause or participate in a vehicular collision, or  
26 any other vehicular accident, for the purpose of presenting any  
27 false or fraudulent claim.

28 (4) Knowingly present a false or fraudulent claim for the  
29 payments of a loss for theft, destruction, damage, or conversion  
30 of a motor vehicle, a motor vehicle part, or contents of a motor  
31 vehicle.

32 (5) Knowingly prepare, make, or subscribe any writing, with  
33 the intent to present or use it, or to allow it to be presented, in  
34 support of any false or fraudulent claim.

35 (6) Knowingly make or cause to be made any false or fraudulent  
36 claim for payment of a health care benefit.

37 (7) Knowingly submit a claim for a health care benefit that was  
38 not used by, or on behalf of, the claimant.

39 (8) Knowingly present multiple claims for payment of the same  
40 health care benefit with an intent to defraud.

(9) Knowingly present for payment any undercharges for health care benefits on behalf of a specific claimant unless any known overcharges for health care benefits for that claimant are presented for reconciliation at that same time.

(10) For purposes of paragraphs (6) to (9), inclusive, a claim or a claim for payment of a health care benefit also means a claim or claim for payment submitted by or on the behalf of a provider of any workers' compensation health benefits under the Labor Code.

(b) It is unlawful to do, or to knowingly assist or conspire with any person to do, any of the following:

(1) Present or cause to be presented any written or oral statement as part of, or in support of or opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(2) Prepare or make any written or oral statement that is intended to be presented to any insurer or any insurance claimant in connection with, or in support of or opposition to, any claim or payment or other benefit pursuant to an insurance policy, knowing that the statement contains any false or misleading information concerning any material fact.

(3) Conceal, or knowingly fail to disclose the occurrence of, an event that affects any person's initial or continued right or entitlement to any insurance benefit or payment, or the amount of any benefit or payment to which the person is entitled.

(4) Prepare or make any written or oral statement, intended to be presented to any insurer or producer for the purpose of obtaining a motor vehicle insurance policy, that the person to be the insured resides or is domiciled in this state when, in fact, that person resides or is domiciled in a state other than this state.

(c) (1) Every person who violates paragraph (1), (2), (3), (4), or (5) of subdivision (a) is guilty of a felony punishable by imprisonment in the state prison for two, three, or five years, and by a fine not exceeding fifty thousand dollars (\$50,000), or double the amount of the fraud, whichever is greater.

(2) Every person who violates paragraph (6), (7), (8), or (9) of subdivision (a) is guilty of a public offense.

(A) When the claim or amount at issue exceeds ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, the offense is punishable by imprisonment in the state prison for two, three, or



1 five years, or by a fine not exceeding fifty thousand dollars  
2 (\$50,000) or double the amount of the fraud, whichever is greater,  
3 or by both that imprisonment and fine, or by imprisonment in a  
4 county jail not to exceed one year, by a fine of not more than ten  
5 thousand dollars (\$10,000), or by both that imprisonment and fine.

6 (B) When the claim or amount at issue is ~~four hundred dollars~~  
7 ~~(\$400)~~ *nine hundred fifty dollars (\$950)* or less, the offense is  
8 punishable by imprisonment in a county jail not to exceed six  
9 months, or by a fine of not more than one thousand dollars  
10 (\$1,000), or by both that imprisonment and fine, unless the  
11 aggregate amount of the claims or amount at issue exceeds ~~four~~  
12 ~~hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* in any  
13 12-consecutive-month period, in which case the claims or amounts  
14 may be charged as in subparagraph (A).

15 (3) Every person who violates paragraph (1), (2), (3), or (4) of  
16 subdivision (b) shall be punished by imprisonment in the state  
17 prison for two, three, or five years, or by a fine not exceeding fifty  
18 thousand dollars (\$50,000) or double the amount of the fraud,  
19 whichever is greater, or by both that imprisonment and fine, or by  
20 imprisonment in a county jail not to exceed one year, or by a fine  
21 of not more than ten thousand dollars (\$10,000), or by both that  
22 imprisonment and fine.

23 (4) Restitution shall be ordered for a person convicted of  
24 violating this section, including restitution for any medical  
25 evaluation or treatment services obtained or provided. The court  
26 shall determine the amount of restitution and the person or persons  
27 to whom the restitution shall be paid.

28 (d) Notwithstanding any other provision of law, probation shall  
29 not be granted to, nor shall the execution or imposition of a  
30 sentence be suspended for, any adult person convicted of felony  
31 violations of this section who previously has been convicted of  
32 felony violations of this section or Section 548, or of Section  
33 1871.4 of the Insurance Code, or former Section 556 of the  
34 Insurance Code, or former Section 1871.1 of the Insurance Code  
35 as an adult under charges separately brought and tried two or more  
36 times. The existence of any fact that would make a person ineligible  
37 for probation under this subdivision shall be alleged in the  
38 information or indictment, and either admitted by the defendant  
39 in an open court, or found to be true by the jury trying the issue

1 of guilt or by the court where guilt is established by plea of guilty  
2 or nolo contendere or by trial by the court sitting without a jury.

3 Except when the existence of the fact was not admitted or found  
4 to be true or the court finds that a prior felony conviction was  
5 invalid, the court shall not strike or dismiss any prior felony  
6 convictions alleged in the information or indictment.

7 This subdivision does not prohibit the adjournment of criminal  
8 proceedings pursuant to Division 3 (commencing with Section  
9 3000) or Division 6 (commencing with Section 6000) of the  
10 Welfare and Institutions Code.

11 (e) Except as otherwise provided in subdivision (f), any person  
12 who violates subdivision (a) or (b) and who has a prior felony  
13 conviction of an offense set forth in either subdivision (a) or (b),  
14 in Section 548, in Section 1871.4 of the Insurance Code, in former  
15 Section 556 of the Insurance Code, or in former Section 1871.1  
16 of the Insurance Code shall receive a two-year enhancement for  
17 each prior felony conviction in addition to the sentence provided  
18 in subdivision (c). The existence of any fact that would subject a  
19 person to a penalty enhancement shall be alleged in the information  
20 or indictment and either admitted by the defendant in open court,  
21 or found to be true by the jury trying the issue of guilt or by the  
22 court where guilt is established by plea of guilty or nolo contendere  
23 or by trial by the court sitting without a jury. Any person who  
24 violates this section shall be subject to appropriate orders of  
25 restitution pursuant to Section 13967 of the Government Code.

26 (f) Any person who violates paragraph (3) of subdivision (a)  
27 and who has two prior felony convictions for a violation of  
28 paragraph (3) of subdivision (a) shall receive a five-year  
29 enhancement in addition to the sentence provided in subdivision  
30 (c). The existence of any fact that would subject a person to a  
31 penalty enhancement shall be alleged in the information or  
32 indictment and either admitted by the defendant in open court, or  
33 found to be true by the jury trying the issue of guilt or by the court  
34 where guilt is established by plea of guilty or nolo contendere or  
35 by trial by the court sitting without a jury.

36 (g) Except as otherwise provided in Section 12022.7, any person  
37 who violates paragraph (3) of subdivision (a) shall receive a  
38 two-year enhancement for each person other than an accomplice  
39 who suffers serious bodily injury resulting from the vehicular

1 collision or accident in a violation of paragraph (3) of subdivision  
2 (a).

3 (h) This section shall not be construed to preclude the  
4 applicability of any other provision of criminal law or equitable  
5 remedy that applies or may apply to any act committed or alleged  
6 to have been committed by a person.

7 (i) Any fine imposed pursuant to this section shall be doubled  
8 if the offense was committed in connection with any claim pursuant  
9 to any automobile insurance policy in an auto insurance fraud crisis  
10 area designated by the Insurance Commissioner pursuant to Article  
11 4.6 (commencing with Section 1874.90) of Chapter 12 of Part 2  
12 of Division 1 of the Insurance Code.

13 (j) *Alternatively, on or after the operative date of an applicable*  
14 *rule or rules proposed by the California Public Safety Commission,*  
15 *a first or subsequent violation of this section is punishable as*  
16 *provided in the applicable sentencing rules.*

17 SEC. 265. Section 551 of the Penal Code is amended to read:

18 551. (a) It is unlawful for any automotive repair dealer,  
19 contractor, or employees or agents thereof to offer to any insurance  
20 agent, broker, or adjuster any fee, commission, profit sharing, or  
21 other form of direct or indirect consideration for referring an  
22 insured to an automotive repair dealer or its employees or agents  
23 for vehicle repairs covered under a policyholder's automobile  
24 physical damage or automobile collision coverage, or to a  
25 contractor or its employees or agents for repairs to or replacement  
26 of a structure covered by a residential or commercial insurance  
27 policy.

28 (b) Except in cases in which the amount of the repair or  
29 replacement claim has been determined by the insurer and the  
30 repair or replacement services are performed in accordance with  
31 that determination or in accordance with provided estimates that  
32 are accepted by the insurer, it is unlawful for any automotive repair  
33 dealer, contractor, or employees or agents thereof to knowingly  
34 offer or give any discount intended to offset a deductible required  
35 by a policy of insurance covering repairs to or replacement of a  
36 motor vehicle or residential or commercial structure. This  
37 subdivision does not prohibit an advertisement for repair or  
38 replacement services at a discount as long as the amount of the  
39 repair or replacement claim has been determined by the insurer  
40 and the repair or replacement services are performed in accordance

1 with that determination or in accordance with provided estimates  
2 that are accepted by the insurer.

3 (c) A violation of this section is a public offense. Where the  
4 amount at issue exceeds ~~four hundred dollars (\$400)~~ *nine hundred*  
5 *fifty dollars (\$950)*, the offense is punishable by imprisonment in  
6 the state prison for 16 months, or 2 or 3 years, by a fine of not  
7 more than ten thousand dollars (\$10,000), or by both that  
8 imprisonment and fine; or by imprisonment in a county jail not to  
9 exceed one year, by a fine of not more than one thousand dollars  
10 (\$1,000), or by both that imprisonment and fine. In all other cases,  
11 the offense is punishable by imprisonment in a county jail not to  
12 exceed six months, by a fine of not more than one thousand dollars  
13 (\$1,000), or by both that imprisonment and fine.

14 (d) Every person who, having been convicted of subdivision  
15 (a) or (b), or Section 7027.3 or former Section 9884.75 of the  
16 Business and Professions Code and having served a term therefor  
17 in any penal institution or having been imprisoned therein as a  
18 condition of probation for that offense, is subsequently convicted  
19 of subdivision (a) or (b), upon a subsequent conviction of one of  
20 those offenses, shall be punished by imprisonment in the state  
21 prison for 16 months, or 2 or 3 years, by a fine of not more than  
22 ten thousand dollars (\$10,000), or by both that imprisonment and  
23 fine; or by imprisonment in a county jail not to exceed one year,  
24 by a fine of not more than one thousand dollars (\$1,000), or by  
25 both that imprisonment and fine.

26 (e) *Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates this section shall be punished as provided*  
29 *in the applicable sentencing rules.*

30 ~~(e)~~

31 (f) For purposes of this section:

32 (1) “Automotive repair dealer” means a person who, for  
33 compensation, engages in the business of repairing or diagnosing  
34 malfunctions of motor vehicles.

35 (2) “Contractor” has the same meaning as set forth in Section  
36 7026 of the Business and Professions Code.

37 *SEC. 266. Section 560 of the Penal Code is amended to read:*

38 560. (a) Any bailee, as defined in Section 7102 of the Uniform  
39 Commercial Code, who issues or aids in issuing a document of  
40 title, or any person who secures the issue by a bailee of a document

of title, or any person who negotiates or transfers for value a document of title knowing that the goods for which such document is issued have not been actually received by such bailee or are not under his control at the time of issuing such receipt shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both *that fine and imprisonment*.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 267. Section 560.4 of the Penal Code is amended to read:

560.4. (a) Any bailee, as defined in Section 7102 of the Uniform Commercial Code, who issues or aids in issuing a duplicate or additional negotiable document of title for goods knowing that a former negotiable document of title for the same goods or any part of them is outstanding and uncanceled without plainly placing upon the face thereof the word “duplicate,” except in cases of bills in a set and documents issued as substitutes for lost, stolen, or destroyed documents, shall be guilty of a crime and upon conviction shall be punished for each offense by imprisonment in the state prison, or by a fine not exceeding ten thousand dollars (\$10,000), or by both *that fine and imprisonment*.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 268. Section 565 of the Penal Code is amended to read:

565. It is a misdemeanor, punishable by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or both, for an unauthorized person to possess or use, or to obliterate or destroy the brand registration upon, containers (including milk cases), cabinets, or other dairy equipment, which have a value of ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or less, when the containers, cabinets, or other dairy equipment are marked with a brand that is registered pursuant to Chapter 10 (commencing with Section 34501) of Part 1 of Division 15 of the Food and Agricultural Code. “Unauthorized person” shall have the meaning of that term as defined in Section 34564 of the Food and Agricultural Code.

1     *SEC. 269. Section 566 of the Penal Code is amended to read:*

2     566. (a) It is a felony, punishable by a fine not exceeding one  
3 thousand five hundred dollars (\$1,500), or by imprisonment, or  
4 both, for an unauthorized person to possess or use, or to obliterate  
5 or destroy the brand registration upon, containers (including milk  
6 cases), cabinets, or other dairy equipment, which have a value in  
7 excess of ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars*  
8 (\$950), when the containers, cabinets, or other dairy equipment  
9 are marked with a brand that is registered pursuant to Chapter 10  
10 (commencing with Section 34501) of Part 1 of Division 15 of the  
11 Food and Agricultural Code. “Unauthorized person” shall have  
12 the meaning of that term as defined in Section 34564 of the Food  
13 and Agricultural Code.

14     (b) *Alternatively, on or after the operative date of an applicable*  
15 *rule or rules proposed by the California Public Safety Commission,*  
16 *a person who violates this section shall be punished as provided*  
17 *in the applicable sentencing rules.*

18     *SEC. 270. Section 570 of the Penal Code is amended to read:*

19     570. (a) An act of unlawful subleasing of a motor vehicle, as  
20 defined in Section 571, shall be punishable by imprisonment in  
21 the state prison or in ~~the~~ a county jail for not more than one year,  
22 or by a fine of not more than ten thousand dollars (\$10,000), or  
23 by both that fine and imprisonment.

24     (b) *Alternatively, on or after the operative date of an applicable*  
25 *rule or rules proposed by the California Public Safety Commission,*  
26 *a person who violates Section 571 shall be punished as provided*  
27 *in the applicable sentencing rules.*

28     *SEC. 271. Section 577 of the Penal Code is amended to read:*

29     577. (a) Every person, being the master, owner, or agent of  
30 any vessel, or officer or agent of any railroad, express, or  
31 transportation company, or otherwise being or representing any  
32 carrier, who delivers any bill of lading, receipt, or other voucher,  
33 by which it appears that any merchandise of any description has  
34 been shipped on board any vessel, or delivered to any railroad,  
35 express, or transportation company or other carrier, unless the  
36 same has been so shipped or delivered, and is at the time actually  
37 under the control of ~~such that~~ carrier or the master, owner, or agent  
38 of ~~such that~~ vessel, or of some officer or agent of ~~such that~~  
39 company, to be forwarded as expressed in ~~such the~~ bill of lading,  
40 receipt, or voucher, is punishable by imprisonment in the state

1 prison, or by a fine not exceeding one thousand dollars (\$1,000),  
2 or both *that fine and imprisonment*.

3 *(b) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 SEC. 272. Section 578 of the Penal Code is amended to read:

8 578. (a) Every person carrying on the business of a  
9 warehouseman, wharfinger, or other depositary of property, who  
10 issues any receipt, bill of lading, or other voucher for any  
11 merchandise of any description, which has not been actually  
12 received upon the premises of such person, and is not under his  
13 actual control at the time of issuing such instrument, whether such  
14 instrument is issued to a person as being the owner of such  
15 merchandise or as security for any indebtedness, is punishable by  
16 imprisonment in the state prison, or by a fine not exceeding one  
17 thousand dollars (\$1,000), or both *that fine and imprisonment*.

18 *(b) Alternatively, on or after the operative date of an applicable*  
19 *rule or rules proposed by the California Public Safety Commission,*  
20 *a person who violates this section shall be punished as provided*  
21 *in the applicable sentencing rules.*

22 SEC. 273. Section 580 of the Penal Code is amended to read:

23 580. (a) Every person mentioned in this chapter, who issues  
24 any second or duplicate receipt or voucher, of a kind specified  
25 therein, at a time while any former receipt or voucher for the  
26 merchandise specified in ~~such~~ the second receipt is outstanding  
27 and uncanceled, without writing across the face of the same the  
28 word "Duplicate," in a plain and legible manner, is punishable by  
29 imprisonment in the state prison, or by a fine not exceeding one  
30 thousand dollars (\$1,000), or both *that fine and imprisonment*.

31 *(b) Alternatively, on or after the operative date of an applicable*  
32 *rule or rules proposed by the California Public Safety Commission,*  
33 *a person who violates this section shall be punished as provided*  
34 *in the applicable sentencing rules.*

35 SEC. 274. Section 581 of the Penal Code is amended to read:

36 581. (a) Every person mentioned in this chapter, who sells,  
37 hypothecates, or pledges any merchandise for which any bill of  
38 lading, receipt, or voucher has been issued by him or her, without  
39 the consent in writing thereto of the person holding ~~such~~ that bill,  
40 receipt, or voucher, is punishable by imprisonment in the state

1 prison, or by a fine not exceeding one thousand dollars (\$1,000),  
2 or both.

3 *(b) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 SEC. 275. Section 587 of the Penal Code is amended to read:

8 587. (a) Every person who maliciously, either:

9 1. Removes, displaces, injures, or destroys any part of any  
10 railroad, whether for steam or horse cars, or any track of any  
11 railroad, or any branch or branchway, switch, turnout, bridge,  
12 viaduct, culvert, embankment, station house, or other structure or  
13 fixture, or any part thereof, attached to or connected with any  
14 railroad; or,

15 2. Places any obstruction upon the rails or track of any railroad,  
16 or of any switch, branch, branchway, or turnout connected with  
17 any railroad;

18 Is punishable by imprisonment in the state prison, or in ~~the~~ a  
19 county jail not exceeding one year.

20 *(b) Alternatively, on or after the operative date of an applicable*  
21 *rule or rules proposed by the California Public Safety Commission,*  
22 *a person who violates this section shall be punished as provided*  
23 *in the applicable sentencing rules.*

24 SEC. 276. Section 591 of the Penal Code is amended to read:

25 591. (a) A person who unlawfully and maliciously takes down,  
26 removes, injures, or obstructs any line of telegraph, telephone, or  
27 cable television, or any other line used to conduct electricity, or  
28 any part thereof, or appurtenances or apparatus connected  
29 therewith, or severs any wire thereof, or makes any unauthorized  
30 connection with any line, other than a telegraph, telephone, or  
31 cable television line, used to conduct electricity, or any part thereof,  
32 or appurtenances or apparatus connected therewith, is punishable  
33 by imprisonment in the state prison, or by a fine not exceeding  
34 five hundred dollars (\$500); or imprisonment in ~~the~~ a county jail  
35 not exceeding one year.

36 *(b) Alternatively, on or after the operative date of an applicable*  
37 *rule or rules proposed by the California Public Safety Commission,*  
38 *a person who violates this section shall be punished as provided*  
39 *in the applicable sentencing rules.*

40 SEC. 277. Section 592 of the Penal Code is amended to read:



592. (a) Every person who shall, without authority of the owner or managing agent, and with intent to defraud, take water from any canal, ditch, flume, or reservoir used for the purpose of holding or conveying water for manufacturing, agricultural, mining, irrigating, generation of power, or domestic uses is guilty of a misdemeanor.

(b) If the total retail value of all the water taken is more than ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*, or if the defendant has previously been convicted of an offense under this section or any former section that would be an offense under this section, or of an offense under the laws of another state or of the United States that would have been an offense under this section if committed in this state, then the violation is punishable by imprisonment in ~~the~~ a county jail for not more than one year, or in the state prison.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 278. Section 593d of the Penal Code is amended to read:

593d. (a) Except as provided in subdivision (e), any person who, for the purpose of intercepting, receiving, or using any program or other service carried by a multichannel video or information services provider that the person is not authorized by that provider to receive or use, commits any of the following acts is guilty of a public offense:

(1) Knowingly and willfully makes or maintains an unauthorized connection or connections, whether physically, electrically, electronically, or inductively, to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

(2) Knowingly and willfully purchases, possesses, attaches, causes to be attached, assists others in attaching, or maintains the attachment of any unauthorized device or devices to any cable, wire, or other component of a multichannel video or information services provider's system or to a cable, wire or other media, or receiver that is attached to a multichannel video or information services provider's system.

1 (3) Knowingly and willfully makes or maintains any  
2 modification or alteration to any device installed with the  
3 authorization of a multichannel video or information services  
4 provider.

5 (4) Knowingly and willfully makes or maintains any  
6 modifications or alterations to an access device that authorizes  
7 services or knowingly and willfully obtains an unauthorized access  
8 device and uses the modified, altered, or unauthorized access device  
9 to obtain services from a multichannel video or information  
10 services provider.

11 For purposes of this section, each purchase, possession,  
12 connection, attachment, or modification shall constitute a separate  
13 violation of this section.

14 (b) Except as provided in subdivision (e), any person who  
15 knowingly and willfully manufactures, assembles, modifies,  
16 imports into this state, distributes, sells, offers to sell, advertises  
17 for sale, or possesses for any of these purposes, any device or kit  
18 for a device, designed, in whole or in part, to decrypt, decode,  
19 descramble, or otherwise make intelligible any encrypted, encoded,  
20 scrambled, or other nonstandard signal carried by a multichannel  
21 video or information services provider, unless the device has been  
22 granted an equipment authorization by the Federal Communications  
23 Commission (FCC), is guilty of a public offense.

24 For purposes of this subdivision, “encrypted, encoded, scrambled,  
25 or other nonstandard signal” means any type of signal or  
26 transmission that is not intended to produce an intelligible program  
27 or service without the use of a special device, signal, or information  
28 provided by the multichannel video or information services  
29 provider or its agents to authorized subscribers.

30 (c) Every person who knowingly and willfully makes or  
31 maintains an unauthorized connection or connections with, whether  
32 physically, electrically, electronically, or inductively, or who  
33 attaches, causes to be attached, assists others in attaching, or  
34 maintains any attachment to, any cable, wire, or other component  
35 of a multichannel video or information services provider’s system,  
36 for the purpose of interfering with, altering, or degrading any  
37 multichannel video or information service being transmitted to  
38 others, or for the purpose of transmitting or broadcasting any  
39 program or other service not intended to be transmitted or broadcast

1 by the multichannel video or information services provider, is  
2 guilty of a public offense.

3 For purposes of this section, each transmission or broadcast shall  
4 constitute a separate violation of this section.

5 (d) (1) Any person who violates subdivision (a) shall be  
6 punished by a fine not exceeding one thousand dollars (\$1,000),  
7 by imprisonment in a county jail not exceeding 90 days, or by both  
8 that fine and imprisonment.

9 (2) Any person who violates subdivision (b) shall be punished  
10 as follows:

11 (A) If the violation involves the manufacture, assembly,  
12 modification, importation into this state, distribution, advertisement  
13 for sale, or possession for sale or for any of these purposes, of 10  
14 or more of the items described in subdivision (b), or the sale or  
15 offering for sale of five or more items for financial gain, the person  
16 shall be punished by imprisonment in a county jail not exceeding  
17 one year, or in the state prison, by a fine not exceeding two hundred  
18 fifty thousand dollars (\$250,000), or by both that imprisonment  
19 and fine.

20 (B) If the violation involves the manufacture, assembly,  
21 modification, importation into this state, distribution, advertisement  
22 for sale, or possession for sale or for any of these purposes, of nine  
23 or less of the items described in subdivision (b), or the sale or  
24 offering for sale of four or less items for financial gain, shall upon  
25 a conviction of a first offense, be punished by imprisonment in a  
26 county jail not exceeding one year, by a fine not exceeding  
27 twenty-five thousand dollars (\$25,000), or by both that  
28 imprisonment and fine. A second or subsequent conviction shall  
29 be punished by imprisonment in a county jail not exceeding one  
30 year, or in the state prison, by a fine not exceeding one hundred  
31 thousand dollars (\$100,000), or by both that imprisonment and  
32 fine.

33 (3) Any person who violates subdivision (c) shall be punished  
34 by a fine not exceeding ten thousand dollars (\$10,000), by  
35 imprisonment in a county jail, or by both that fine and  
36 imprisonment.

37 (e) Any device or kit described in subdivision (a) or (b) seized  
38 under warrant or incident to a lawful arrest, upon the conviction  
39 of a person for a violation of subdivision (a) or (b), may be  
40 destroyed as contraband by the sheriff.

(f) Any person who violates this section shall be liable in a civil action to the multichannel video or information services provider for the greater of the following amounts:

(1) Five thousand dollars (\$5,000).

(2) Three times the amount of actual damages, if any, sustained by the plaintiff plus reasonable attorney's fees.

A defendant who prevails in the action shall be awarded his or her reasonable attorney's fees.

(g) Any multichannel video or information services provider may, in accordance with the provisions of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, bring an action to enjoin and restrain any violation of this section, and may in the same action seek damages as provided in subdivision (f).

(h) It is not a necessary prerequisite to an action pursuant to this section that the plaintiff has suffered, or be threatened with, actual damages.

(i) For the purposes of this section, a "multichannel video or information services provider" means a franchised or otherwise duly licensed cable television system, video dialtone system, Multichannel Multipoint Distribution Service system, Direct Broadcast Satellite system, or other system providing video or information services that are distributed via cable, wire, radio frequency, or other media. A video dialtone system is a platform operated by a public utility telephone corporation for the transport of video programming as authorized by the Federal Communications Commission pursuant to FCC Docket No. 87-266, and any subsequent decisions related to that docket, subject to any rules promulgated by the FCC pursuant to those decisions.

(j) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 279. *Section 594.35 of the Penal Code is amended to read:*

594.35. (a) Every person is guilty of a crime and punishable by imprisonment in the state prison or by imprisonment in a county jail for not exceeding one year, who maliciously does any of the following:

(a)

(1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down, or removes any tomb, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any inclosure for the protection of a cemetery or mortuary or any property in a cemetery or mortuary.

~~(b)~~

(2) Obliterates any grave, vault, niche, or crypt.

~~(c)~~

(3) Destroys, cuts, breaks or injures any mortuary building or any building, statuary, or ornamentation within the limits of a cemetery.

~~(d)~~

(4) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 280. Section 594.4 of the Penal Code is amended to read:

594.4. (a) Any person who willfully and maliciously injects into or throws upon, or otherwise defaces, damages, destroys, or contaminates, any structure with butyric acid, or any other similar noxious or caustic chemical or substance, is guilty of a public offense, punishable by imprisonment in the state prison or in a county jail, by a fine as specified in subdivision (b), or by both that imprisonment and fine.

(b) (1) If the amount of the defacement, damage, destruction, or contamination is fifty thousand dollars (\$50,000) or more, by a fine of not more than fifty thousand dollars (\$50,000).

(2) If the amount of the defacement, damage, destruction, or contamination is five thousand dollars (\$5,000) or more, but less than fifty thousand dollars (\$50,000), by a fine of not more than ten thousand dollars (\$10,000).

(3) If the amount of defacement, damage, destruction, or contamination is ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or more, but less than five thousand dollars (\$5,000), by a fine of not more than five thousand dollars (\$5,000).

(4) If the amount of the defacement, damage, destruction, or contamination is less than ~~four hundred dollars (\$400)~~ *nine hundred*

1 *fifty dollars (\$950), by a fine of not more than one thousand dollars*  
2 *(\$1,000).*

3 *(c) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 ~~(e)~~

8 *(d) For purposes of this section, “structure” includes any house*  
9 *or other building being used at the time of the offense for a*  
10 *dwelling or for commercial purposes.*

11 *SEC. 281. Section 641.3 of the Penal Code is amended to read:*

12 641.3. (a) Any employee who solicits, accepts, or agrees to  
13 accept money or any thing of value from a person other than his  
14 or her employer, other than in trust for the employer, corruptly  
15 and without the knowledge or consent of the employer, in return  
16 for using or agreeing to use his or her position for the benefit of  
17 that other person, and any person who offers or gives an employee  
18 money or any thing of value under those circumstances, is guilty  
19 of commercial bribery.

20 (b) This section does not apply where the amount of money or  
21 monetary worth of the thing of value is ~~one hundred dollars (\$100)~~  
22 *two hundred fifty dollars (\$250) or less.*

23 (c) Commercial bribery is punishable by imprisonment in the  
24 county jail for not more than one year if the amount of the bribe  
25 is one thousand dollars (\$1,000) or less, or by imprisonment in the  
26 county jail, or in the state prison for 16 months, or two or three  
27 years if the amount of the bribe exceeds one thousand dollars  
28 (\$1,000).

29 (d) For purposes of this section:

30 (1) “Employee” means an officer, director, agent, trustee,  
31 partner, or employee.

32 (2) “Employer” means a corporation, association, organization,  
33 trust, partnership, or sole proprietorship.

34 (3) “Corruptly” means that the person specifically intends to  
35 injure or defraud (A) his or her employer, (B) the employer of the  
36 person to whom he or she offers, gives, or agrees to give the money  
37 or a thing of value, (C) the employer of the person from whom he  
38 or she requests, receives, or agrees to receive the money or a thing  
39 of value, or (D) a competitor of any such employer.

40 *SEC. 282. Section 646.9 of the Penal Code is amended to read:*

1     646.9. (a) Any person who willfully, maliciously, and  
2 repeatedly follows or willfully and maliciously harasses another  
3 person and who makes a credible threat with the intent to place  
4 that person in reasonable fear for his or her safety, or the safety of  
5 his or her immediate family is guilty of the crime of stalking,  
6 punishable by imprisonment in a county jail for not more than one  
7 year, or by a fine of not more than one thousand dollars (\$1,000),  
8 or by both that fine and imprisonment, or by imprisonment in the  
9 state prison.

10    (b) Any person who violates subdivision (a) when there is a  
11 temporary restraining order, injunction, or any other court order  
12 in effect prohibiting the behavior described in subdivision (a)  
13 against the same party, shall be punished by imprisonment in the  
14 state prison for two, three, or four years.

15    (c) (1) Every person who, after having been convicted of a  
16 felony under Section 273.5, 273.6, or 422, commits a violation of  
17 subdivision (a) shall be punished by imprisonment in a county jail  
18 for not more than one year, or by a fine of not more than one  
19 thousand dollars (\$1,000), or by both that fine and imprisonment,  
20 or by imprisonment in the state prison for two, three, or five years.

21    (2) Every person who, after having been convicted of a felony  
22 under subdivision (a), commits a violation of this section shall be  
23 punished by imprisonment in the state prison for two, three, or  
24 five years.

25    (d) *Alternatively, on or after the operative date of an applicable*  
26 *rule or rules proposed by the California Public Safety Commission,*  
27 *a person who violates this section shall be punished as provided*  
28 *in the applicable sentencing rules.*

29    ~~(d)~~

30    (e) In addition to the penalties provided in this section, the  
31 sentencing court may order a person convicted of a felony under  
32 this section to register as a sex offender pursuant to Section  
33 290.006.

34    ~~(e)~~

35    (f) (1) For the purposes of this section, “harasses” means  
36 engages in a knowing and willful course of conduct directed at a  
37 specific person that seriously alarms, annoys, torments, or terrorizes  
38 the person, and that serves no legitimate purpose.

39    ~~(f)~~

(2) For the purposes of this section, “course of conduct” means two or more acts occurring over a period of time, however short, evidencing a continuity of purpose. Constitutionally protected activity is not included within the meaning of “course of conduct.”

~~(g)~~

(3) For the purposes of this section, “credible threat” means a verbal or written threat, including that performed through the use of an electronic communication device, or a threat implied by a pattern of conduct or a combination of verbal, written, or electronically communicated statements and conduct, made with the intent to place the person that is the target of the threat in reasonable fear for his or her safety or the safety of his or her family, and made with the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her family. It is not necessary to prove that the defendant had the intent to actually carry out the threat. The present incarceration of a person making the threat shall not be a bar to prosecution under this section. Constitutionally protected activity is not included within the meaning of “credible threat.”

~~(h)~~

(4) For purposes of this section, the term “electronic communication device” includes, but is not limited to, telephones, cellular phones, computers, video recorders, fax machines, or pagers. “Electronic communication” has the same meaning as the term defined in Subsection 12 of Section 2510 of Title 18 of the United States Code.

*(5) For purposes of this section, “immediate family” means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.*

~~(i)~~

(g) This section shall not apply to conduct that occurs during labor picketing.

~~(j)~~

(h) If probation is granted, or the execution or imposition of a sentence is suspended, for any person convicted under this section, it shall be a condition of probation that the person participate in counseling, as designated by the court. However, the court, upon



a showing of good cause, may find that the counseling requirement shall not be imposed.

~~(k)~~

(i) (1) The sentencing court also shall consider issuing an order restraining the defendant from any contact with the victim, that may be valid for up to 10 years, as determined by the court. It is the intent of the Legislature that the length of any restraining order be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.

(2) This protective order may be issued by the court whether the defendant is sentenced to state prison, county jail, or if imposition of sentence is suspended and the defendant is placed on probation.

~~(l) For purposes of this section, "immediate family" means any spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any other person who regularly resides in the household, or who, within the prior six months, regularly resided in the household.~~

~~(m)~~

(j) The court shall consider whether the defendant would benefit from treatment pursuant to Section 2684. If it is determined to be appropriate, the court shall recommend that the Department of Corrections and Rehabilitation make a certification as provided in Section 2684. Upon the certification, the defendant shall be evaluated and transferred to the appropriate hospital for treatment pursuant to Section 2684.

*SEC. 283. Section 664 of the Penal Code is amended to read:*

664. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in its perpetration, shall be punished where no provision is made by law for the punishment of those attempts, as follows:

(a) If the crime attempted is punishable by imprisonment in the state prison, the person guilty of the attempt shall be punished by imprisonment in the state prison for one-half the term of imprisonment prescribed upon a conviction of the offense attempted. However, if the crime attempted is willful, deliberate, and premeditated murder, as defined in Section 189, the person guilty of that attempt shall be punished by imprisonment in the state prison for life with the possibility of parole. If the crime

1 attempted is any other one in which the maximum sentence is life  
2 imprisonment or death, the person guilty of the attempt shall be  
3 punished by imprisonment in the state prison for five, seven, or  
4 nine years. The additional term provided in this section for  
5 attempted willful, deliberate, and premeditated murder shall not  
6 be imposed unless the fact that the attempted murder was willful,  
7 deliberate, and premeditated is charged in the accusatory pleading  
8 and admitted or found to be true by the trier of fact.

9 (b) If the crime attempted is punishable by imprisonment in a  
10 county jail, the person guilty of the attempt shall be punished by  
11 imprisonment in a county jail for a term not exceeding one-half  
12 the term of imprisonment prescribed upon a conviction of the  
13 offense attempted.

14 (c) If the offense so attempted is punishable by a fine, the  
15 offender convicted of that attempt shall be punished by a fine not  
16 exceeding one-half the largest fine which may be imposed upon  
17 a conviction of the offense attempted.

18 (d) If a crime is divided into degrees, an attempt to commit the  
19 crime may be of any of those degrees, and the punishment for the  
20 attempt shall be determined as provided by this section.

21 (e) Notwithstanding subdivision (a), if attempted murder is  
22 committed upon a peace officer or firefighter, as those terms are  
23 defined in paragraphs (7) and (9) of subdivision (a) of Section  
24 190.2, a custodial officer, as that term is defined in subdivision (a)  
25 of Section 831 or subdivision (a) of Section 831.5, a custody  
26 assistant, as that term is defined in subdivision (a) of Section 831.7,  
27 or a nonsworn uniformed employee of a sheriff's department whose  
28 job entails the care or control of inmates in a detention facility, as  
29 defined in subdivision (c) of Section 289.6, and the person who  
30 commits the offense knows or reasonably should know that the  
31 victim is a peace officer, firefighter, custodial officer, custody  
32 assistant, or nonsworn uniformed employee of a sheriff's  
33 department engaged in the performance of his or her duties, the  
34 person guilty of the attempt shall be punished by imprisonment in  
35 the state prison for life with the possibility of parole.

36 This subdivision shall apply if it is proven that a direct but  
37 ineffectual act was committed by one person toward killing another  
38 human being and the person committing the act harbored express  
39 malice aforethought, namely, a specific intent to unlawfully kill

1 another human being. The Legislature finds and declares that this  
2 paragraph is declaratory of existing law.

3 (f) Notwithstanding subdivision (a), if the elements of  
4 subdivision (e) are proven in an attempted murder and it is also  
5 charged and admitted or found to be true by the trier of fact that  
6 the attempted murder was willful, deliberate, and premeditated,  
7 the person guilty of the attempt shall be punished by imprisonment  
8 in the state prison for 15 years to life. Article 2.5 (commencing  
9 with Section 2930) of Chapter 7 of Title 1 of Part 3 shall not apply  
10 to reduce this minimum term of 15 years in state prison, and the  
11 person shall not be released prior to serving 15 years' confinement.

12 (g) *Alternatively, on or after the operative date of an applicable*  
13 *rule or rules proposed by the California Public Safety Commission,*  
14 *a person who violates this section shall be punished as provided*  
15 *in the applicable sentencing rules.*

16 SEC. 284. *Section 666 of the Penal Code is amended to read:*

17 666. (a) Every person who, having been convicted of petty  
18 theft, grand theft, auto theft under Section 10851 of the Vehicle  
19 Code, burglary, carjacking, robbery, or a felony violation of Section  
20 496 and having served a term therefor in any penal institution or  
21 having been imprisoned therein as a condition of probation for  
22 that offense, is subsequently convicted of petty theft, then the  
23 person convicted of that subsequent offense is punishable by  
24 imprisonment in the county jail not exceeding one year, ~~or in the~~  
25 ~~state prison.~~

26 (b) *Alternatively, on or after the operative date of an applicable*  
27 *rule or rules proposed by the California Public Safety Commission,*  
28 *a person who violates this section shall be punished as provided*  
29 *in the applicable sentencing rules.*

30 SEC. 285. *Section 666.5 of the Penal Code is amended to read:*

31 666.5. (a) Every person who, having been previously convicted  
32 of a felony violation of Section 10851 of the Vehicle Code, or  
33 felony grand theft involving an automobile in violation of  
34 subdivision (d) of Section 487 or former subdivision (3) of Section  
35 487, as that section read prior to being amended by Section 4 of  
36 Chapter 1125 of the Statutes of 1993, or felony grand theft  
37 involving a motor vehicle, as defined in Section 415 of the Vehicle  
38 Code, any trailer, as defined in Section 630 of the Vehicle Code,  
39 any special construction equipment, as defined in Section 565 of  
40 the Vehicle Code, or any vessel, as defined in Section 21 of the

1 Harbors and Navigation Code in violation of former Section 487h,  
2 or a felony violation of Section 496d regardless of whether or not  
3 the person actually served a prior prison term for those offenses,  
4 is subsequently convicted of any of these offenses shall be punished  
5 by imprisonment in the state prison for two, three, or four years,  
6 or a fine of ten thousand dollars (\$10,000), or both the fine and  
7 the imprisonment.

8 *(b) Alternatively, on or after the operative date of an applicable*  
9 *rule or rules proposed by the California Public Safety Commission,*  
10 *a person who violates this section shall be punished as provided*  
11 *in the applicable sentencing rules.*

12 ~~(b)~~

13 *(c) For the purposes of this section, the terms “special*  
14 *construction equipment” and “vessel” are limited to motorized*  
15 *vehicles and vessels.*

16 ~~(e)~~

17 *(d) The existence of any fact which would bring a person under*  
18 *subdivision (a) shall be alleged in the information or indictment*  
19 *and either admitted by the defendant in open court, or found to be*  
20 *true by the jury trying the issue of guilt or by the court where guilt*  
21 *is established by plea of guilty or nolo contendere or by trial by*  
22 *the court sitting without a jury.*

23 *SEC. 286. Section 667.10 of the Penal Code is amended to*  
24 *read:*

25 667.10. (a) Any person who has a prior conviction of the  
26 offense set forth in Section 289 and who commits that crime against  
27 a person who is 65 years of age or older, or against a person who  
28 is blind, deaf, developmentally disabled, as defined in subdivision  
29 (d) of Section 667.9, a paraplegic, or a quadriplegic, or against a  
30 person who is under the age of 14 years, and that disability or  
31 condition is known or reasonably should be known to the person  
32 committing the crime, shall receive a two-year enhancement for  
33 each violation in addition to the sentence provided under Section  
34 289.

35 *(b) Alternatively, on or after the operative date of an applicable*  
36 *rule or rules proposed by the California Public Safety Commission,*  
37 *a person who violates this section shall be punished as provided*  
38 *in the applicable sentencing rules.*

39 ~~(b)~~

1 (c) The existence of any fact which would bring a person under  
2 subdivision (a) shall be alleged in the information or indictment  
3 and either admitted by the defendant in open court, or found to be  
4 true by the jury trying the issue of guilt or by the court where guilt  
5 is established by plea of guilty or nolo contendere or by trial by  
6 the court sitting without a jury.

7 SEC. 287. *Section 667.15 of the Penal Code is amended to*  
8 *read:*

9 667.15. Any adult who, prior to or during the commission or  
10 attempted commission of a violation of Section 288 or 288.5,  
11 exhibits to the minor any matter, as defined in subdivision (d) of  
12 Section 311.11, the production of which involves the use of a  
13 person under the age of 14 years, knowing that the matter depicts  
14 a person under the age of 14 years personally engaging in or  
15 simulating sexual conduct, as defined in subdivision (d) of Section  
16 311.4, with the intent of arousing, appealing to, or gratifying the  
17 lust, passions, or sexual desires of that person or of the minor, or  
18 with the intent, or for the purpose, of seducing the minor, shall be  
19 punished for a violation of this section as follows:

20 (a) If convicted of the commission or attempted commission of  
21 a violation of Section 288, the adult shall receive an additional  
22 term of one year, which punishment shall be imposed in addition  
23 and consecutive to the punishment imposed for the commission  
24 or attempted commission of a violation of Section 288.

25 (b) If convicted of the commission or attempted commission of  
26 a violation of Section 288.5, the adult shall receive an additional  
27 term of two years, which punishment shall be imposed in addition  
28 and consecutive to the punishment imposed for the commission  
29 or attempted commission of a violation of Section 288.5.

30 (c) *Alternatively, on or after the operative date of an applicable*  
31 *rule or rules proposed by the California Public Safety Commission,*  
32 *a person who violates this section shall be punished as provided*  
33 *in the applicable sentencing rules.*

34 SEC. 288. *Section 667.16 of the Penal Code is amended to*  
35 *read:*

36 667.16. (a) Any person convicted of a felony violation of  
37 Section 470, 487, or 532 as part of a plan or scheme to defraud an  
38 owner of a residential or nonresidential structure, including a  
39 mobilehome or manufactured home, in connection with the offer  
40 or performance of repairs to the structure for damage caused by a

1 natural disaster, shall receive a one-year enhancement in addition  
2 and consecutive to the penalty prescribed. The additional term  
3 shall not be imposed unless the allegation is charged in the  
4 accusatory pleading and admitted by the defendant or found to be  
5 true by the trier of fact.

6 (b) This enhancement applies to natural disasters for which a  
7 state of emergency is proclaimed by the Governor pursuant to  
8 Section 8625 of the Government Code or for which an emergency  
9 or major disaster is declared by the President of the United States.

10 (c) Notwithstanding any other law, the court may strike the  
11 additional term provided in subdivision (a) if the court determines  
12 that there are mitigating circumstances and states on the record  
13 the reasons for striking the additional punishment.

14 (d) *Alternatively, on or after the operative date of an applicable*  
15 *rule or rules proposed by the California Public Safety Commission,*  
16 *a person who violates this section shall be punished as provided*  
17 *in the applicable sentencing rules.*

18 SEC. 289. *Section 667.17 of the Penal Code is amended to*  
19 *read:*

20 667.17. (a) Any person who violates the provisions of Section  
21 538d during the commission of a felony shall receive an additional  
22 one-year term of imprisonment to be imposed consecutive to the  
23 term imposed for the felony, in lieu of the penalty that would have  
24 been imposed under Section 538d.

25 (b) *Alternatively, on or after the operative date of an applicable*  
26 *rule or rules proposed by the California Public Safety Commission,*  
27 *a person who violates this section shall be punished as provided*  
28 *in the applicable sentencing rules.*

29 SEC. 290. *Section 667.5 of the Penal Code is amended to read:*

30 667.5. Enhancement of prison terms for new offenses because  
31 of prior prison terms shall be imposed as follows:

32 (a) Where one of the new offenses is one of the violent felonies  
33 specified in subdivision (c), in addition to and consecutive to any  
34 other prison terms therefor, the court shall impose a three-year  
35 term for each prior separate prison term served by the defendant  
36 where the prior offense was one of the violent felonies specified  
37 in subdivision (c). However, no additional term shall be imposed  
38 under this subdivision for any prison term served prior to a period  
39 of 10 years in which the defendant remained free of both prison

1 custody and the commission of an offense which results in a felony  
2 conviction.

3 (b) Except where subdivision (a) applies, where the new offense  
4 is any felony for which a prison sentence is imposed, in addition  
5 and consecutive to any other prison terms therefor, the court shall  
6 impose a one-year term for each prior separate prison term served  
7 for any felony; provided that no additional term shall be imposed  
8 under this subdivision for any prison term served prior to a period  
9 of five years in which the defendant remained free of both prison  
10 custody and the commission of an offense which results in a felony  
11 conviction.

12 (c) For the purpose of this section, “violent felony” shall mean  
13 any of the following:

14 (1) Murder or voluntary manslaughter.

15 (2) Mayhem.

16 (3) Rape as defined in paragraph (2) or (6) of subdivision (a)  
17 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
18 262.

19 (4) Sodomy as defined in subdivision (c) or (d) of Section 286.

20 (5) Oral copulation as defined in subdivision (c) or (d) of Section  
21 288a.

22 (6) Lewd or lascivious act as defined in subdivision (a) or (b)  
23 of Section 288.

24 (7) Any felony punishable by death or imprisonment in the state  
25 prison for life.

26 (8) Any felony in which the defendant inflicts great bodily injury  
27 on any person other than an accomplice which has been charged  
28 and proved as provided for in Section 12022.7, 12022.8, or 12022.9  
29 on or after July 1, 1977, or as specified prior to July 1, 1977, in  
30 Sections 213, 264, and 461, or any felony in which the defendant  
31 uses a firearm which use has been charged and proved as provided  
32 in subdivision (a) of Section 12022.3, or Section 12022.5 or  
33 12022.55.

34 (9) Any robbery.

35 (10) Arson, in violation of subdivision (a) or (b) of Section 451.

36 (11) Sexual penetration as defined in subdivision (a) or (j) of  
37 Section 289.

38 (12) Attempted murder.

39 (13) A violation of Section 12308, 12309, or 12310.

40 (14) Kidnapping.

1 (15) Assault with the intent to commit a specified felony, in  
2 violation of Section 220.

3 (16) Continuous sexual abuse of a child, in violation of Section  
4 288.5.

5 (17) Carjacking, as defined in subdivision (a) of Section 215.

6 (18) Rape, spousal rape, or sexual penetration, in concert, in  
7 violation of Section 264.1.

8 (19) Extortion, as defined in Section 518, which would constitute  
9 a felony violation of Section 186.22 of the Penal Code.

10 (20) Threats to victims or witnesses, as defined in Section 136.1,  
11 which would constitute a felony violation of Section 186.22 of the  
12 Penal Code.

13 (21) Any burglary of the first degree, as defined in subdivision  
14 (a) of Section 460, wherein it is charged and proved that another  
15 person, other than an accomplice, was present in the residence  
16 during the commission of the burglary.

17 (22) Any violation of Section 12022.53.

18 (23) A violation of subdivision (b) or (c) of Section 11418. The  
19 Legislature finds and declares that these specified crimes merit  
20 special consideration when imposing a sentence to display society's  
21 condemnation for these extraordinary crimes of violence against  
22 the person.

23 (d) For the purposes of this section, the defendant shall be  
24 deemed to remain in prison custody for an offense until the official  
25 discharge from custody or until release on parole, whichever first  
26 occurs, including any time during which the defendant remains  
27 subject to reimprisonment for escape from custody or is  
28 reimprisoned on revocation of parole. The additional penalties  
29 provided for prior prison terms shall not be imposed unless they  
30 are charged and admitted or found true in the action for the new  
31 offense.

32 (e) The additional penalties provided for prior prison terms shall  
33 not be imposed for any felony for which the defendant did not  
34 serve a prior separate term in state prison.

35 (f) A prior conviction of a felony shall include a conviction in  
36 another jurisdiction for an offense which, if committed in  
37 California, is punishable by imprisonment in the state prison if the  
38 defendant served one year or more in prison for the offense in the  
39 other jurisdiction. A prior conviction of a particular felony shall  
40 include a conviction in another jurisdiction for an offense which



1 includes all of the elements of the particular felony as defined  
2 under California law if the defendant served one year or more in  
3 prison for the offense in the other jurisdiction.

4 (g) A prior separate prison term for the purposes of this section  
5 shall mean a continuous completed period of prison incarceration  
6 imposed for the particular offense alone or in combination with  
7 concurrent or consecutive sentences for other crimes, including  
8 any reimprisonment on revocation of parole which is not  
9 accompanied by a new commitment to prison, and including any  
10 reimprisonment after an escape from incarceration.

11 (h) Serving a prison term includes any confinement time in any  
12 state prison or federal penal institution as punishment for  
13 commission of an offense, including confinement in a hospital or  
14 other institution or facility credited as service of prison time in the  
15 jurisdiction of the confinement.

16 (i) For the purposes of this section, a commitment to the State  
17 Department of Mental Health as a mentally disordered sex offender  
18 following a conviction of a felony, which commitment exceeds  
19 one year in duration, shall be deemed a prior prison term.

20 (j) For the purposes of this section, when a person subject to  
21 the custody, control, and discipline of the ~~Director of Corrections~~  
22 ~~is incarcerated at a facility operated by the Department of the Youth~~  
23 ~~Authority~~ *Department of Corrections and Rehabilitation at a*  
24 *facility operated by the department*, that incarceration shall be  
25 deemed to be a term served in state prison.

26 (k) Notwithstanding subdivisions (d) and (g) or any other  
27 provision of law, where one of the new offenses is committed  
28 while the defendant is temporarily removed from prison pursuant  
29 to Section 2690 or while the defendant is transferred to a  
30 community facility pursuant to Section 3416, 6253, or 6263, or  
31 while the defendant is on furlough pursuant to Section 6254, the  
32 defendant shall be subject to the full enhancements provided for  
33 in this section.

34 This subdivision shall not apply when a full, separate, and  
35 consecutive term is imposed pursuant to any other provision of  
36 law.

37 (l) *Alternatively, on or after the operative date of an applicable*  
38 *rule or rules proposed by the California Public Safety Commission,*  
39 *a person who violates this section shall be punished as provided*  
40 *in the applicable sentencing rules, except that no sentencing rule*

1 *shall change any provision of this section that was specifically*  
2 *added by voter initiative.*

3 *SEC. 291. Section 667.51 of the Penal Code is amended to*  
4 *read:*

5 667.51. (a) Any person who is convicted of violating Section  
6 288 or 288.5 shall receive a five-year enhancement for a prior  
7 conviction of an offense specified in subdivision (b).

8 (b) Section 261, 262, 264.1, 269, 285, 286, 288, 288a, 288.5,  
9 or 289, or any offense committed in another jurisdiction that  
10 includes all of the elements of any of the offenses specified in this  
11 subdivision.

12 (c) A violation of Section 288 or 288.5 by a person who has  
13 been previously convicted two or more times of an offense  
14 specified in subdivision (b) shall be punished by imprisonment in  
15 the state prison for 15 years to life.

16 (d) *Alternatively, on or after the operative date of an applicable*  
17 *rule or rules proposed by the California Public Safety Commission,*  
18 *a person who violates this section shall be punished as provided*  
19 *in the applicable sentencing rules, except that no sentencing rule*  
20 *shall change any provision of this section that was specifically*  
21 *added by voter initiative.*

22 *SEC. 292. Section 667.6 of the Penal Code is amended to read:*

23 667.6. (a) Any person who is convicted of an offense specified  
24 in subdivision (e) and who has been convicted previously of any  
25 of those offenses shall receive a five-year enhancement for each  
26 of those prior convictions.

27 (b) Any person who is convicted of an offense specified in  
28 subdivision (e) and who has served two or more prior prison terms  
29 as defined in Section 667.5 for any of those offenses shall receive  
30 a 10-year enhancement for each of those prior terms.

31 (c) In lieu of the term provided in Section 1170.1, a full,  
32 separate, and consecutive term may be imposed for each violation  
33 of an offense specified in subdivision (e) if the crimes involve the  
34 same victim on the same occasion. A term may be imposed  
35 consecutively pursuant to this subdivision if a person is convicted  
36 of at least one offense specified in subdivision (e). If the term is  
37 imposed consecutively pursuant to this subdivision, it shall be  
38 served consecutively to any other term of imprisonment, and shall  
39 commence from the time the person otherwise would have been  
40 released from imprisonment. The term shall not be included in any

1 determination pursuant to Section 1170.1. Any other term imposed  
2 subsequent to that term shall not be merged therein but shall  
3 commence at the time the person otherwise would have been  
4 released from prison.

5 (d) A full, separate, and consecutive term shall be imposed for  
6 each violation of an offense specified in subdivision (e) if the  
7 crimes involve separate victims or involve the same victim on  
8 separate occasions.

9 In determining whether crimes against a single victim were  
10 committed on separate occasions under this subdivision, the court  
11 shall consider whether, between the commission of one sex crime  
12 and another, the defendant had a reasonable opportunity to reflect  
13 upon his or her actions and nevertheless resumed sexually  
14 assaultive behavior. Neither the duration of time between crimes,  
15 nor whether or not the defendant lost or abandoned his or her  
16 opportunity to attack, shall be, in and of itself, determinative on  
17 the issue of whether the crimes in question occurred on separate  
18 occasions.

19 The term shall be served consecutively to any other term of  
20 imprisonment and shall commence from the time the person  
21 otherwise would have been released from imprisonment. The term  
22 shall not be included in any determination pursuant to Section  
23 1170.1. Any other term imposed subsequent to that term shall not  
24 be merged therein but shall commence at the time the person  
25 otherwise would have been released from prison.

26 (e) This section shall apply to the following offenses:

27 (1) Rape, in violation of paragraph (2), (3), (6), or (7) of  
28 subdivision (a) of Section 261.

29 (2) Spousal rape, in violation of paragraph (1), (4), or (5) of  
30 subdivision (a) of Section 262.

31 (3) Rape, spousal rape, or sexual penetration, in concert, in  
32 violation of Section 264.1.

33 (4) Sodomy, in violation of paragraph (2) or (3) of subdivision  
34 (c), or subdivision (d) or (k), of Section 286.

35 (5) Lewd or lascivious act, in violation of subdivision (b) of  
36 Section 288.

37 (6) Continuous sexual abuse of a child, in violation of Section  
38 288.5.

39 (7) Oral copulation, in violation of paragraph (2) or (3) of  
40 subdivision (c), or subdivision (d) or (k), of Section 288a.

1 (8) Sexual penetration, in violation of subdivision (a) or (g) of  
2 Section 289.

3 (9) As a present offense under subdivision (c) or (d), assault  
4 with intent to commit a specified sexual offense, in violation of  
5 Section 220.

6 (10) As a prior conviction under subdivision (a) or (b), an  
7 offense committed in another jurisdiction that includes all of the  
8 elements of an offense specified in this subdivision.

9 (f) In addition to any enhancement imposed pursuant to  
10 subdivision (a) or (b), the court may also impose a fine not to  
11 exceed twenty thousand dollars (\$20,000) for anyone sentenced  
12 under those provisions. The fine imposed and collected pursuant  
13 to this subdivision shall be deposited in the Victim-Witness  
14 Assistance Fund to be available for appropriation to fund child  
15 sexual exploitation and child sexual abuse victim counseling  
16 centers and prevention programs established pursuant to Section  
17 13837. If the court orders a fine to be imposed pursuant to this  
18 subdivision, the actual administrative cost of collecting that fine,  
19 not to exceed 2 percent of the total amount paid, may be paid into  
20 the general fund of the county treasury for the use and benefit of  
21 the county.

22 (g) *Alternatively, on or after the operative date of an applicable*  
23 *rule or rules proposed by the California Public Safety Commission,*  
24 *a person who violates this section shall be punished as provided*  
25 *in the applicable sentencing rules, except that no sentencing rule*  
26 *shall change any provision of this section that was specifically*  
27 *added by voter initiative.*

28 SEC. 293. *Section 667.61 of the Penal Code is amended to*  
29 *read:*

30 667.61. (a) Any person who is convicted of an offense  
31 specified in subdivision (c) under one or more of the circumstances  
32 specified in subdivision (d) or under two or more of the  
33 circumstances specified in subdivision (e) shall be punished by  
34 imprisonment in the state prison for 25 years to life.

35 (b) Except as provided in subdivision (a), any person who is  
36 convicted of an offense specified in subdivision (c) under one of  
37 the circumstances specified in subdivision (e) shall be punished  
38 by imprisonment in the state prison for 15 years to life.

39 (c) This section shall apply to any of the following offenses:

1 (1) Rape, in violation of paragraph (2) or (6) of subdivision (a)  
2 of Section 261.

3 (2) Spousal rape, in violation of paragraph (1) or (4) of  
4 subdivision (a) of Section 262.

5 (3) Rape, spousal rape, or sexual penetration, in concert, in  
6 violation of Section 264.1.

7 (4) Lewd or lascivious act, in violation of subdivision (b) of  
8 Section 288.

9 (5) Sexual penetration, in violation of subdivision (a) of Section  
10 289.

11 (6) Sodomy, in violation of paragraph (2) or (3) of subdivision  
12 (c), or subdivision (d), of Section 286.

13 (7) Oral copulation, in violation of paragraph (2) or (3) of  
14 subdivision (c), or subdivision (d), of Section 288a.

15 (8) Lewd or lascivious act, in violation of subdivision (a) of  
16 Section 288.

17 (9) Continuous sexual abuse of a child, in violation of Section  
18 288.5.

19 (d) The following circumstances shall apply to the offenses  
20 specified in subdivision (c):

21 (1) The defendant has been previously convicted of an offense  
22 specified in subdivision (c), including an offense committed in  
23 another jurisdiction that includes all of the elements of an offense  
24 specified in subdivision (c).

25 (2) The defendant kidnapped the victim of the present offense  
26 and the movement of the victim substantially increased the risk of  
27 harm to the victim over and above that level of risk necessarily  
28 inherent in the underlying offense in subdivision (c).

29 (3) The defendant inflicted aggravated mayhem or torture on  
30 the victim or another person in the commission of the present  
31 offense in violation of Section 205 or 206.

32 (4) The defendant committed the present offense during the  
33 commission of a burglary of the first degree, as defined in  
34 subdivision (a) of Section 460, with intent to commit an offense  
35 specified in subdivision (c).

36 (5) The defendant committed the present offense in violation  
37 of Section 264.1, subdivision (d) of Section 286, or subdivision  
38 (d) of Section 288a, and, in the commission of that offense, any  
39 person committed any act described in paragraph (2), (3), or (4)  
40 of this subdivision.

(e) The following circumstances shall apply to the offenses specified in subdivision (c):

(1) Except as provided in paragraph (2) of subdivision (d), the defendant kidnapped the victim of the present offense in violation of Section 207, 209, or 209.5.

(2) Except as provided in paragraph (4) of subdivision (d), the defendant committed the present offense during the commission of a burglary in violation of Section 459.

(3) The defendant personally inflicted great bodily injury on the victim or another person in the commission of the present offense in violation of Section 12022.53, 12022.7, or 12022.8.

(4) The defendant personally used a dangerous or deadly weapon or a firearm in the commission of the present offense in violation of Section 12022, 12022.3, 12022.5, or 12022.53.

(5) The defendant has been convicted in the present case or cases of committing an offense specified in subdivision (c) against more than one victim.

(6) The defendant engaged in the tying or binding of the victim or another person in the commission of the present offense.

(7) The defendant administered a controlled substance to the victim in the commission of the present offense in violation of Section 12022.75.

(8) The defendant committed the present offense in violation of Section 264.1, subdivision (d) of Section 286, or subdivision (d) of Section 288a, and, in the commission of that offense, any person committed any act described in paragraph (1), (2), (3), (4), (6), or (7) of this subdivision.

(f) If only the minimum number of circumstances specified in subdivision (d) or (e) that are required for the punishment provided in subdivision (a) or (b) to apply have been pled and proved, that circumstance or those circumstances shall be used as the basis for imposing the term provided in subdivision (a) or (b), whichever is greater, rather than being used to impose the punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or the punishment under another provision of law can be imposed in addition to the punishment provided by this section. However, if any additional circumstance or circumstances specified in subdivision (d) or (e) have been pled and proved, the minimum number of circumstances shall be used as the basis for imposing the term provided in

1 subdivision (a), and any other additional circumstance or  
2 circumstances shall be used to impose any punishment or  
3 enhancement authorized under any other provision of law.

4 (g) Notwithstanding Section 1385 or any other provision of law,  
5 the court shall not strike any allegation, admission, or finding of  
6 any of the circumstances specified in subdivision (d) or (e) for any  
7 person who is subject to punishment under this section.

8 (h) Notwithstanding any other provision of law, probation shall  
9 not be granted to, nor shall the execution or imposition of sentence  
10 be suspended for, any person who is subject to punishment under  
11 this section.

12 (i) For any offense specified in paragraphs (1) to (7), inclusive,  
13 of subdivision (c), the court shall impose a consecutive sentence  
14 for each offense that results in a conviction under this section if  
15 the crimes involve separate victims or involve the same victim on  
16 separate occasions as defined in subdivision (d) of Section 667.6.

17 (j) The penalties provided in this section shall apply only if the  
18 existence of any circumstance specified in subdivision (d) or (e)  
19 is alleged in the accusatory pleading pursuant to this section, and  
20 is either admitted by the defendant in open court or found to be  
21 true by the trier of fact.

22 (k) *Alternatively, on or after the operative date of an applicable*  
23 *rule or rules proposed by the California Public Safety Commission,*  
24 *a person who violates this section shall be punished as provided*  
25 *in the applicable sentencing rules, except that no sentencing rule*  
26 *shall change any provision of this section that was specifically*  
27 *added by voter initiative.*

28 SEC. 294. Section 667.7 of the Penal Code is amended to read:

29 667.7. (a) Any person convicted of a felony in which the  
30 person inflicted great bodily injury as provided in Section 12022.53  
31 or 12022.7, or personally used force which was likely to produce  
32 great bodily injury, who has served two or more prior separate  
33 prison terms as defined in Section 667.5 for the crime of murder;  
34 attempted murder; voluntary manslaughter; mayhem; rape by force,  
35 violence, or fear of immediate and unlawful bodily injury on the  
36 victim or another person; oral copulation by force, violence, duress,  
37 menace, or fear of immediate and unlawful bodily injury on the  
38 victim or another person; sodomy by force, violence, duress,  
39 menace, or fear of immediate and unlawful bodily injury on the  
40 victim or another person; lewd acts on a child under the age of 14

1 years by use of force, violence, duress, menace, or fear of  
2 immediate and unlawful bodily injury on the victim or another  
3 person; a violation of subdivision (a) of Section 289 where the act  
4 is accomplished against the victim's will by means of force,  
5 violence, duress, menace, or fear of immediate and unlawful bodily  
6 injury on the victim or another person; kidnapping as punished in  
7 former subdivision (d) of Section 208, or for ransom, extortion,  
8 or robbery; robbery involving the use of force or a deadly weapon;  
9 carjacking involving the use of a deadly weapon; assault with  
10 intent to commit murder; assault with a deadly weapon; assault  
11 with a force likely to produce great bodily injury; assault with  
12 intent to commit rape, sodomy, oral copulation, sexual penetration  
13 in violation of Section 289, or lewd and lascivious acts on a child;  
14 arson of a structure; escape or attempted escape by an inmate with  
15 force or violence in violation of subdivision (a) of Section 4530,  
16 or of Section 4532; exploding a destructive device with intent to  
17 murder in violation of Section 12308; exploding a destructive  
18 device which causes bodily injury in violation of Section 12309,  
19 or mayhem or great bodily injury in violation of Section 12310;  
20 exploding a destructive device with intent to injure, intimidate, or  
21 terrify, in violation of Section 12303.3; any felony in which the  
22 person inflicted great bodily injury as provided in Section 12022.53  
23 or 12022.7; or any felony punishable by death or life imprisonment  
24 with or without the possibility of parole is a habitual offender and  
25 shall be punished as follows:

26 (1) A person who served two prior separate prison terms shall  
27 be punished by imprisonment in the state prison for life and shall  
28 not be eligible for release on parole for 20 years, or the term  
29 determined by the court pursuant to Section 1170 for the underlying  
30 conviction, including any enhancement applicable under Chapter  
31 4.5 (commencing with Section 1170) of Title 7 of Part 2, or any  
32 period prescribed by Section 190 or 3046, whichever is greatest.  
33 Article 2.5 (commencing with Section 2930) of Chapter 7 of Title  
34 1 of Part 3 shall apply to reduce any minimum term in a state prison  
35 imposed pursuant to this section, but the person shall not otherwise  
36 be released on parole prior to that time.

37 (2) Any person convicted of a felony specified in this  
38 subdivision who has served three or more prior separate prison  
39 terms, as defined in Section 667.5, for the crimes specified in



subdivision (a) of this section shall be punished by imprisonment in the state prison for life without the possibility of parole.

(b) This section shall not prevent the imposition of the punishment of death or imprisonment for life without the possibility of parole. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the *former* Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

(c) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 295. *Section 667.71 of the Penal Code is amended to read:*

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses specified in subdivision (c) and who is convicted in the present proceeding of one of those offenses.

(b) A habitual sexual offender shall be punished by imprisonment in the state prison for 25 years to life.

(c) This section shall apply to any of the following offenses:

(1) Rape, in violation of paragraph (2) or (6) of subdivision (a) of Section 261.

(2) Spousal rape, in violation of paragraph (1) or (4) of subdivision (a) of Section 262.

(3) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(4) Lewd or lascivious act, in violation of subdivision (a) or (b) of Section 288.

(5) Sexual penetration, in violation of subdivision (a) or (j) of Section 289.

(6) Continuous sexual abuse of a child, in violation of Section 288.5.

(7) Sodomy, in violation of subdivision (c) or (d) of Section 286.

(8) Oral copulation, in violation of subdivision (c) or (d) of Section 288a.

(9) Kidnapping, in violation of subdivision (b) of Section 207.

(10) Kidnapping, in violation of former subdivision (d) of Section 208 (kidnapping to commit specified sex offenses).

(11) Kidnapping, in violation of subdivision (b) of Section 209 with the intent to commit a specified sexual offense.

(12) Aggravated sexual assault of a child, in violation of Section 269.

(13) An offense committed in another jurisdiction that includes all of the elements of an offense specified in this subdivision.

(d) Notwithstanding Section 1385 or any other provision of law, the court shall not strike any allegation, admission, or finding of any prior conviction specified in subdivision (c) for any person who is subject to punishment under this section.

(e) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who is subject to punishment under this section.

(f) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the trier of fact.

(g) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules, except that no sentencing rule shall change any provision of this section that was specifically added by voter initiative.*

SEC. 296. *Section 667.75 of the Penal Code is amended to read:*

667.75. (a) Any person convicted of a violation of Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code who has previously served two or more prior separate prison terms, as defined in Section 667.5, for a violation of Section 11353, 11353.5, 11361, 11380, or 11380.5 of the Health and Safety Code,

may be punished by imprisonment in the state prison for life and shall not be eligible for release on parole for 17 years, or the term determined by the court pursuant to Section 1170 for the underlying conviction, including any enhancement applicable under Chapter 4.5 (commencing with Section 1170) of Title 7 of Part 2, whichever is greatest. The provisions of Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 shall apply to reduce any minimum term in a state prison imposed pursuant to this section, but the person shall not otherwise be released on parole prior to that time. No prior prison term shall be used for this determination which was served prior to a period of 10 years in which the person remained free of both prison custody and the commission of an offense which results in a felony conviction. As used in this section, a commitment to the *former* Department of the Youth Authority after conviction for a felony shall constitute a prior prison term. The term imposed under this section shall be imposed only if the prior prison terms are alleged under this section in the accusatory pleading, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by a trial by the court sitting without a jury.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 297. Section 667.8 of the Penal Code is amended to read:

667.8. (a) Except as provided in subdivision (b), any person convicted of a felony violation of Section 261, 262, 264.1, 286, 288a, or 289 who, for the purpose of committing that sexual offense, kidnapped the victim in violation of Section 207 or 209, shall be punished by an additional term of nine years.

(b) Any person convicted of a felony violation of subdivision (c) of Section 286, Section 288, or subdivision (c) of Section 288a who, for the purpose of committing that sexual offense, kidnapped the victim, who was under the age of 14 years at the time of the offense, in violation of Section 207 or 209, shall be punished by an additional term of 15 years. This subdivision is not applicable to conduct proscribed by Section 277, 278, or 278.5.

(c) The following shall govern the imposition of an enhancement pursuant to this section:

1 (1) Only one enhancement shall be imposed for a victim per  
2 incident.

3 (2) If there are two or more victims, one enhancement can be  
4 imposed for each victim per incident.

5 (3) The enhancement may be in addition to the punishment for  
6 either, but not both, of the following:

7 (A) A violation of Section 207 or 209.

8 (B) A violation of the sexual offenses enumerated in this section.

9 *(d) Alternatively, on or after the operative date of an applicable*  
10 *rule or rules proposed by the California Public Safety Commission,*  
11 *a person who violates this section shall be punished as provided*  
12 *in the applicable sentencing rules.*

13 SEC. 298. Section 667.85 of the Penal Code is amended to  
14 read:

15 667.85. (a) Any person convicted of a violation of Section  
16 207 or 209, who kidnapped or carried away any child under the  
17 age of 14 years with the intent to permanently deprive the parent  
18 or legal guardian custody of that child, shall be punished by  
19 imprisonment in the state prison for an additional five years.

20 *(b) Alternatively, on or after the operative date of an applicable*  
21 *rule or rules proposed by the California Public Safety Commission,*  
22 *a person who violates this section shall be punished as provided*  
23 *in the applicable sentencing rules.*

24 SEC. 299. Section 667.9 of the Penal Code is amended to read:

25 667.9. (a) Any person who commits one or more of the crimes  
26 specified in subdivision (c) against a person who is 65 years of  
27 age or older, or against a person who is blind, deaf,  
28 developmentally disabled, a paraplegic, or a quadriplegic, or  
29 against a person who is under the age of 14 years, and that  
30 disability or condition is known or reasonably should be known  
31 to the person committing the crime, shall receive a one-year  
32 enhancement for each violation.

33 (b) Any person who commits a violation of subdivision (a) and  
34 who has a prior conviction for any of the offenses specified in  
35 subdivision (c), shall receive a two-year enhancement for each  
36 violation in addition to the sentence provided under Section 667.

37 (c) Subdivisions (a) and (b) apply to the following crimes:

38 (1) Mayhem, in violation of Section 203 or 205.

39 (2) Kidnapping, in violation of Section 207, 209, or 209.5.

40 (3) Robbery, in violation of Section 211.

1 (4) Carjacking, in violation of Section 215.

2 (5) Rape, in violation of paragraph (2) or (6) of subdivision (a)  
3 of Section 261.

4 (6) Spousal rape, in violation of paragraph (1) or (4) of  
5 subdivision (a) of Section 262.

6 (7) Rape, spousal rape, or sexual penetration in concert, in  
7 violation of Section 264.1.

8 (8) Sodomy, in violation of paragraph (2) or (3) of subdivision  
9 (c), or subdivision (d), of Section 286.

10 (9) Oral copulation, in violation of paragraph (2) or (3) of  
11 subdivision (c), or subdivision (d), of Section 288a.

12 (10) Sexual penetration, in violation of subdivision (a) of Section  
13 289.

14 (11) Burglary of the first degree, as defined in Section 460, in  
15 violation of Section 459.

16 *(d) Alternatively, on or after the operative date of an applicable*  
17 *rule or rules proposed by the California Public Safety Commission,*  
18 *a person who violates this section shall be punished as provided*  
19 *in the applicable sentencing rules.*

20 ~~(d)~~

21 *(e) As used in this section, “developmentally disabled” means*  
22 *a severe, chronic disability of a person, which is all of the*  
23 *following:*

24 (1) Attributable to a mental or physical impairment or a  
25 combination of mental and physical impairments.

26 (2) Likely to continue indefinitely.

27 (3) Results in substantial functional limitation in three or more  
28 of the following areas of life activity:

29 (A) Self-care.

30 (B) Receptive and expressive language.

31 (C) Learning.

32 (D) Mobility.

33 (E) Self-direction.

34 (F) Capacity for independent living.

35 (G) Economic self-sufficiency.

36 *SEC. 300. Section 668 of the Penal Code is amended to read:*

37 668. (a) Every person who has been convicted in any other  
38 state, government, country, or jurisdiction of an offense for which,  
39 if committed within this state, that person could have been punished  
40 under the laws of this state by imprisonment in the state prison, is

1 punishable for any subsequent crime committed within this state  
2 in the manner prescribed by law and to the same extent as if that  
3 prior conviction had taken place in a court of this state. The  
4 application of this section includes, but is not limited to, all statutes  
5 that provide for an enhancement or a term of imprisonment based  
6 on a prior conviction or a prior prison term.

7 *(b) Alternatively, on or after the operative date of an applicable*  
8 *rule or rules proposed by the California Public Safety Commission,*  
9 *a person who violates this section shall be punished as provided*  
10 *in the applicable sentencing rules.*

11 *SEC. 301. Section 674 of the Penal Code is amended to read:*

12 674. (a) Any person who is a primary care provider in a day  
13 care facility and who is convicted of a felony violation of Section  
14 261, 285, 286, 288, 288a, or 289, where the victim of the crime  
15 was a minor entrusted to his or her care by the minor's parent or  
16 guardian, a court, any public agency charged with the provision  
17 of social services, or a probation department, may be punished by  
18 an additional term of two years.

19 (b) If the crime described in subdivision (a) was committed  
20 while voluntarily acting in concert with another, the person so  
21 convicted may be punished by an additional term of three years.

22 (c) The enhancements authorized by this section may be imposed  
23 in addition to any other required or authorized enhancement.

24 *(d) Alternatively, on or after the operative date of an applicable*  
25 *rule or rules proposed by the California Public Safety Commission,*  
26 *a person who violates this section shall be punished as provided*  
27 *in the applicable sentencing rules.*

28 *SEC. 302. Section 675 of the Penal Code is amended to read:*

29 675. (a) Any person suffering a felony conviction for a  
30 violation of subdivision (c) or (d) of Section 261.5, paragraph (1)  
31 or (2) of subdivision (b) or paragraph (1) of subdivision (c) of  
32 Section 286, subdivision (a) or paragraph (1) of subdivision (c) of  
33 Section 288, or paragraph (1) or (2) of subdivision (b) or paragraph  
34 (1) of subdivision (c) of Section 288a, where the offense was  
35 committed with a minor for money or other consideration, is  
36 punishable by an additional term of imprisonment in the state  
37 prison of one year.

38 (b) The enhancements authorized by this section may be  
39 imposed in addition to any other required or authorized  
40 enhancement.

1     (c) *Alternatively, on or after the operative date of an applicable*  
2 *rule or rules proposed by the California Public Safety Commission,*  
3 *a person who violates this section shall be punished as provided*  
4 *in the applicable sentencing rules.*

5     SEC. 303. *Section 1170.05 is added to the Penal Code, to read:*

6     1170.05. (a) *Notwithstanding any other law, the Secretary of*  
7 *the Department of Corrections and Rehabilitation is authorized*  
8 *to offer a program under which inmates specified subdivision (c)*  
9 *and not precluded by subdivision (d) who have been committed to*  
10 *state prison, may be allowed to participate in a voluntary*  
11 *alternative custody program as defined in subdivision (b) in lieu*  
12 *of their confinement in state prison. In order to qualify for the*  
13 *program an offender need not be confined in an institution under*  
14 *the jurisdiction of the Department of Corrections and*  
15 *Rehabilitation. Under this program, one day of participation in*  
16 *an alternative custody program shall be in lieu of one day of*  
17 *incarceration in a state prison. Participants in the program shall*  
18 *receive any sentence reduction credits that they would have*  
19 *received had they served their sentence in a state prison, and shall*  
20 *be subject to denial and loss of credit pursuant to subdivision (a)*  
21 *of Section 2932.*

22     (b) *As used in this section, an alternative custody program shall*  
23 *include, but not be limited to, the following:*

24     (1) *Confinement to a residential home during the hours*  
25 *designated by the department.*

26     (2) *Confinement to a residential drug or treatment program*  
27 *during the hours designated by the department.*

28     (3) *Confinement to a transitional care facility during the hours*  
29 *designated by the department.*

30     (c) *As provided in this section, the following inmates sentenced*  
31 *to state prison for a determinate term of imprisonment pursuant*  
32 *to Section 1170 and who fit one or more of the following criteria*  
33 *shall be eligible for the alternative custody program authorized*  
34 *by this section:*

35     (1) *Inmates who have 12 months or less to serve on their term*  
36 *of confinement.*

37     (2) *Inmates who are 60 years of age or older.*

38     (3) *Inmates who are permanently medically incapacitated with*  
39 *a medical condition that renders him or her permanently unable*  
40 *to perform activities of basic daily living.*

1     (d) An inmate committed to the state prison who meets any of  
2     the following criteria shall not be eligible to participate in the  
3     alternative custody program:

4     (1) The person has a current or prior conviction for a violent  
5     offense as defined in Section 667.5.

6     (2) The person has a current or prior conviction for an offense  
7     that requires the person to register as a sex offender as provided  
8     in Chapter 5.5 (commencing with Section 290) of Title 9 of Part  
9     1.

10    (3) The person was screened by the department using a validated  
11    risk assessment tool and determined to pose a high risk to reoffend.

12    (4) The person has a history, within the last 10 years, of escape  
13    while under juvenile or adult custody, including, but not limited  
14    to, any detention facility, group home, treatment facility, camp,  
15    jail, or state prison facility.

16    (e) An alternative custody program shall include the use of  
17    electronic monitoring, global positioning system devices, or other  
18    supervising devices for the purpose of helping to verify a  
19    participant's compliance with the rules and regulations of the  
20    program. The devices shall not be used to eavesdrop or record  
21    any conversation, except a conversation between the participant  
22    and the person supervising the participant which is to be used  
23    solely for the purposes of voice identification.

24    (f) The secretary shall prescribe reasonable rules and  
25    regulations under which the alternative custody program shall  
26    operate. The department shall adopt regulations necessary to  
27    effectuate this section, including emergency regulations as provided  
28    under Section 5058.3 and adopted pursuant to the Administrative  
29    Procedure Act (Chapter 3.5 (commencing with Section 11340) of  
30    Part 1 of Division 3 of Title 2 of the Government Code). The  
31    participant shall be informed in writing that he or she shall comply  
32    with the rules and regulations of the program, including, but not  
33    limited to, the following rules:

34    (1) The participant shall remain within the interior premises of  
35    his or her residence during the hours designated by the secretary  
36    or his or her designee.

37    (2) The participant shall be subject to search and seizure by a  
38    parole officer or other peace officer at any time of the day or night,  
39    with or without cause. In addition, the participant shall admit any  
40    peace officer designated by the secretary of his or her designee



1 into the participant's residence at any time for purposes of  
2 verifying the participant's compliance with the conditions of his  
3 or her detention. Prior to participation in the alternative custody  
4 program, all participants shall agree in writing to these terms and  
5 conditions.

6 (3) The secretary or his or her designee may immediately retake  
7 the participant into custody to serve the balance of his or her  
8 sentence if the electronic monitoring or supervising devices are  
9 unable for any reason to properly perform their function at the  
10 designated place of detention, if the participant fails to remain  
11 within the place of detention as stipulated in the agreement, or if  
12 the participant for any other reason no longer meets the established  
13 criteria under this section.

14 (g) Whenever a peace officer supervising a participant has  
15 reasonable suspicion to believe that the participant is not  
16 complying with the rules or conditions of the program, or that the  
17 electronic monitoring devices are unable to function properly in  
18 the designated place of confinement, the peace officer may, under  
19 general or specific authorization of the secretary or his or her  
20 designee, and without a warrant of arrest, retake the participant  
21 into custody to complete the remainder of the original sentence.

22 (h) Nothing in this section shall be construed to require the  
23 secretary or his or her designee to allow an inmate to participate  
24 in this program if it appears from the record that the inmate has  
25 not satisfactorily complied with reasonable rules and regulations  
26 while in custody. An inmate shall be eligible for participation in  
27 an alternative custody program only if the secretary or his or her  
28 designee concludes that the inmate meets the criteria for program  
29 participation established under this section and that the inmate's  
30 participation is consistent with any reasonable rules and  
31 regulations prescribed by the secretary.

32 (1) The rules and regulations and administrative policies of the  
33 program shall be written and shall be given or made available to  
34 any participant upon request.

35 (2) The secretary or his or her designee shall have the sole  
36 discretion concerning whether to permit program participation  
37 as an alternative to custody in state prison.

38 (i) The secretary or his or her designee shall permit program  
39 participants to seek and retain employment in the community,  
40 attend psychological counseling sessions or educational or

1 vocational training classes, or seek medical and dental assistance.  
2 Willful failure of the program participant to return to the place of  
3 detention not later than the expiration of any period of time during  
4 which he or she is authorized to be away from the place of  
5 detention pursuant to this section, unauthorized departures from  
6 the place of detention, or tampering with or disabling, or  
7 attempting to tamper with or disable, an electronic monitoring  
8 device shall subject the participant to a return to custody pursuant  
9 to subdivisions (f) and (g). In addition, participants may be subject  
10 to forfeiture of credits pursuant to the provisions of Section 2932,  
11 or to discipline for violation of rules established by the secretary.

12 (j) (1) Notwithstanding any other law, the secretary or his or  
13 her designee shall provide the information specified in paragraph  
14 (2) regarding participants in an alternative custody program to  
15 the law enforcement agencies of the jurisdiction in which persons  
16 participating in an alternative custody program reside.

17 (2) The information required by paragraph (1) shall consist of  
18 the following:

19 (A) The participant's name, address, and date of birth.

20 (B) The offense committed by the participant.

21 (C) The period of time the participant will be subject to an  
22 alternative custody program.

23 (3) Any information received by a law enforcement agency  
24 pursuant to this subdivision shall be used only for the purpose of  
25 monitoring the impact of an alternative custody program on the  
26 community.

27 (k) It is the intent of the Legislature that the alternative custody  
28 program established under this section maintain the highest public  
29 confidence, credibility, and public safety. In the furtherance of  
30 these standards, secretary may administer an alternative custody  
31 program pursuant to written contracts with appropriate public  
32 agencies or entities to provide specified program services. No  
33 public agency or entity entering into a contract may itself employ  
34 any person who is in an alternative custody program.

35 (l) An inmate participating in this program must voluntarily  
36 agree to all of the provisions of the program in writing, including  
37 that he or she may be returned to confinement at any time with or  
38 without cause, and shall not be charged fees or costs for the  
39 program.

1     (m) *The secretary shall adopt emergency regulations specifically*  
2 *governing participants in this program.*

3     SEC. 304. *Chapter 3 (commencing with Section 1228) is added*  
4 *to Title 8 of Part 2 of the Penal Code, to read:*

5  
6             *CHAPTER 3. CALIFORNIA COMMUNITY CORRECTIONS*  
7             *PERFORMANCE INCENTIVES*  
8

9     1228. (a) *This chapter shall be known and may be cited as the*  
10 *California Community Corrections Performance Incentives Act*  
11 *of 2009.*

12     (b) *The Legislature finds and declares all of the following:*

13     (1) *In 2007, nearly 270,000 felony offenders were subject to*  
14 *probation supervision in California's communities.*

15     (2) *In 2007, out of 46,987 new admissions to state prison, nearly*  
16 *20,000 were felony offenders who were committed to state prison*  
17 *after failing probation supervision.*

18     (3) *Probation is a judicially imposed suspension of sentence*  
19 *that attempts to supervise, treat, and rehabilitate offenders while*  
20 *they remain in the community under the supervision of the*  
21 *probation department. Probation is a linchpin of the criminal*  
22 *justice system, closely aligned with the courts, and plays a central*  
23 *role in promoting public safety in California's communities.*

24     (4) *Providing sustainable funding for improved, evidence-based*  
25 *probation supervision practices and capacities will improve public*  
26 *safety outcomes among adult felons who are on probation.*  
27 *Improving felony probation performance, measured by a reduction*  
28 *in felony probationers who are sent to prison because they were*  
29 *revoked on probation or convicted of another crime while on*  
30 *probation, will reduce the number of new admissions to state*  
31 *prison, saving taxpayer dollars and allowing a portion of those*  
32 *state savings to be redirected to probation for investing in*  
33 *community corrections programs.*

34     1229. *As used in this chapter, the following definitions apply:*

35     (a) *"Community corrections" means the placement of persons*  
36 *convicted of a felony offense under probation supervision, with*  
37 *conditions imposed by a court for a specified period.*

38     (b) *"Chief probation officer" means the chief probation officer*  
39 *for the county or city and county in which an adult offender is*  
40 *subject to probation for the conviction of a felony offense.*

1 (c) “Community corrections program” means a program  
2 established pursuant to this act consisting of a system of felony  
3 probation supervision services dedicated to all of the following  
4 goals:

5 (1) Enhancing public safety through the management and  
6 reduction of offender risk while under felony probation supervision  
7 and upon reentry from jail into the community.

8 (2) Providing a range of probation supervision tools, sanctions,  
9 and services applied to felony probationers based on a risk/needs  
10 assessment for the purpose of reducing criminal conduct and  
11 promoting behavioral change that results in reducing recidivism  
12 and promoting the successful reintegration of offenders into the  
13 community.

14 (3) Maximizing offender restitution, reconciliation, and  
15 restorative services to victims of crime.

16 (4) Holding offenders accountable for their criminal behaviors  
17 and for successful compliance with applicable court orders and  
18 conditions of supervision.

19 (5) Improving public safety outcomes for persons placed on  
20 probation for a felony offense, as measured by their successful  
21 completion of probation and commensurate reduction in the rate  
22 of felony probationers sent to prison as a result of a probation  
23 revocation or conviction of a new crime.

24 (d) “Evidence-based practices” refers to supervision policies,  
25 procedures, programs, and practices demonstrated by scientific  
26 research to reduce recidivism among individuals under probation,  
27 parole, or postrelease supervision.

28 1230. (a) Each county is hereby authorized to establish in  
29 each county treasury a Community Corrections Performance  
30 Incentive Fund (CCPIF), to receive all amounts allocated to that  
31 county for purposes of implementing this chapter.

32 (b) In any fiscal year for which a county receives moneys to be  
33 expended for the implementation of this chapter, the moneys,  
34 including any interest, shall be made available to the chief  
35 probation officer (CPO) of that county, within 30 days of the  
36 deposit of those moneys into the fund, for the implementation of  
37 that county’s community corrections program as authorized by  
38 this chapter.

1     (1) *The community corrections program shall be developed and*  
2 *implemented by the probation department and advised by a local*  
3 *Community Corrections Partnership.*

4     (2) *The local Community Corrections Partnership shall be*  
5 *chaired by the chief probation officer and comprised of the*  
6 *following membership:*

7         (A) *The presiding judge of the superior court, or his or her*  
8 *designee.*

9         (B) *A county supervisor or the chief administrative officer for*  
10 *the county.*

11         (C) *The district attorney.*

12         (D) *The public defender.*

13         (E) *The sheriff.*

14         (F) *A chief of police.*

15         (G) *The head of the county department of social services.*

16         (H) *The head of the county department of mental health.*

17         (I) *The head of the county department of employment.*

18         (J) *The head of the county alcohol and substance abuse*  
19 *programs.*

20         (K) *The head of the county office of education.*

21         (L) *A representative from a community-based organization with*  
22 *experience in successfully providing rehabilitative services to*  
23 *persons who have been convicted of a criminal offense.*

24     (3) *Funds allocated to probation pursuant to this act shall be*  
25 *used to provide supervision and rehabilitative services for adult*  
26 *felony offenders subject to probation, and shall be spent on*  
27 *evidence-based community corrections practices and programs,*  
28 *as defined in subdivision (c) of Section 1229, which may include,*  
29 *but are not limited to, the following:*

30         (A) *Implementing and expanding evidence-based risk and needs*  
31 *assessments.*

32         (B) *Implementing and expanding intermediate sanctions that*  
33 *include, but are not limited to, electronic monitoring, mandatory*  
34 *community service, home detention, day reporting, restorative*  
35 *justice programs, work furlough programs, and incarceration in*  
36 *county jail for up to 90 days.*

37         (C) *Providing more intensive probation supervision.*

38         (D) *Expanding the availability of evidence-based rehabilitation*  
39 *programs including, but not limited to, drug and alcohol treatment,*

1 *mental health treatment, anger management, cognitive behavior*  
2 *programs, and job training and employment services.*

3 *(E) Evaluating the effectiveness of rehabilitation and supervision*  
4 *programs and ensuring program fidelity.*

5 *(4) The chief probation officer shall have discretion to spend*  
6 *funds on any of the above practices and programs consistent with*  
7 *this act but, at a minimum, shall devote at least 5 percent of all*  
8 *funding received to evaluate the effectiveness of those programs*  
9 *and practices implemented with the funds provided pursuant to*  
10 *this chapter. A chief probation officer may petition the*  
11 *Administrative Office of the Courts to have this restriction waived,*  
12 *and the Administrative Office of the Courts shall have the authority*  
13 *to grant that petition, if the CPO can demonstrate that the*  
14 *department is already devoting sufficient funds to the evaluation*  
15 *of these programs and practices.*

16 *(5) Each probation department receiving funds under this*  
17 *chapter shall maintain a complete and accurate accounting of all*  
18 *funds received pursuant to this chapter.*

19 *1231. (a) Community corrections programs funded pursuant*  
20 *to this act shall identify and track specific outcome-based measures*  
21 *consistent with the goals of this act.*

22 *(b) The Administrative Office of the Courts, in consultation with*  
23 *the Chief Probation Officers of California, shall specify and define*  
24 *minimum required outcome-based measures, which shall include,*  
25 *but not be limited to, all of the following:*

26 *(1) The percentage of persons on felony probation who are*  
27 *being supervised in accordance with evidence-based practices.*

28 *(2) The percentage of state moneys expended for programs that*  
29 *are evidence-based, and a descriptive list of all programs that are*  
30 *evidence-based.*

31 *(3) Specification of supervision policies, procedures, programs,*  
32 *and practices that were eliminated.*

33 *(4) The percentage of persons on felony probation who*  
34 *successfully complete the period of probation.*

35 *(c) Each chief probation officer receiving funding pursuant to*  
36 *Sections 1233 to 1233.6, inclusive, shall provide an annual written*  
37 *report to the Administrative Office of the Courts and the*  
38 *Department of Corrections and Rehabilitation evaluating the*  
39 *effectiveness of the community corrections program, including,*  
40 *but not limited to, the data described in subdivision (b).*

1     (d) *The Administrative Office of the Courts shall, in consultation*  
2 *with the chief probation officer of each county and the Department*  
3 *of Corrections and Rehabilitation, provide a quarterly statistical*  
4 *report to the Department of Finance including, but not limited to,*  
5 *the following statistical information for each county:*

6     (1) *The number of felony filings.*

7     (2) *The number of felony convictions.*

8     (3) *The number of felony convictions in which the defendant*  
9 *was sentenced to the state prison.*

10    (4) *The number of felony convictions in which the defendant*  
11 *was granted probation.*

12    (5) *The adult felon probation population.*

13    (6) *The number of felons who had their probation revoked and*  
14 *were sent to prison for that revocation.*

15    (7) *The number of adult felony probationers sent to state prison*  
16 *for a conviction of a new felony offense, including when probation*  
17 *was revoked or terminated.*

18    1232. *Commencing no later than 18 months following the initial*  
19 *receipt of funding pursuant to this act and annually thereafter, the*  
20 *Administrative Office of the Courts, in consultation with the*  
21 *Department of Corrections and Rehabilitation, the Department of*  
22 *Finance, and the Chief Probation Officers of California, shall*  
23 *submit to the Governor and the Legislature a comprehensive report*  
24 *on the implementation of this act. The report shall include, but not*  
25 *be limited to, all of the following information:*

26    (a) *The effectiveness of the community corrections program*  
27 *based on the reports of performance-based outcome measures*  
28 *required in Section 1231.*

29    (b) *The percentage of felony probationers whose probation was*  
30 *revoked for the year about which the report is being made.*

31    (c) *The percentage of felony probationers who were convicted*  
32 *of crimes during their term of probation for the year about which*  
33 *the report is being made.*

34    (d) *The impact of the moneys appropriated pursuant to this act*  
35 *to enhance public safety by reducing the percentage and number*  
36 *of felony probationers whose probation was revoked for the year*  
37 *being reported on for probation violations or new convictions,*  
38 *and to reduce the number of felony probationers who are sent to*  
39 *prison for the year about which the report is being made.*

1     (e) Any recommendations regarding resource allocations or  
2     additional collaboration with other federal, state, regional, or  
3     local entities, or other for improvements to this act.

4     1233. (a) The Director of Finance, in consultation with the  
5     Department of Corrections and Rehabilitation, the Joint Legislative  
6     Budget Committee, the Chief Probation Officers of California,  
7     and the Administrative Office of the Courts, shall calculate for  
8     each county a baseline probation failure rate that equals the  
9     average number of adult felony probationers sent to state prison  
10    during calendar years 2006 to 2008, inclusive, as a percentage of  
11    the average adult felony probation population during the same  
12    period.

13    (b) For purposes of calculating the baseline probation failure  
14    rate, the number of adult felony probationers sent to prison shall  
15    include those adult felony probationers sent to state prison for a  
16    revocation of probation, as well as adult felony probationers sent  
17    to state prison for a conviction of a new felony offense. The  
18    calculation shall also include adult felony probationers sent to  
19    prison for conviction of a new crime who simultaneously have  
20    their probation term terminated.

21    1233.1. After the conclusion of each calendar year following  
22    the enactment of this section, the Director of Finance, in  
23    consultation with the Department of Corrections and  
24    Rehabilitation, the Joint Legislative Budget Committee, the Chief  
25    Probation Officers of California, and the Administrative Office of  
26    the Courts, shall calculate the following for that calendar year:

27    (a) The cost to the state to incarcerate in prison and supervise  
28    on parole a probationer sent to prison. This calculation shall take  
29    into consideration factors, including, but not limited to, the average  
30    length of stay in prison and on parole for probationers, as well as  
31    the associated parole revocation rates, and revocation costs.

32    (b) The statewide probation failure rate. The statewide probation  
33    failure rate shall be calculated as the total number of adult felony  
34    probationers statewide sent to prison in the previous year as a  
35    percentage of the statewide adult felony probation population as  
36    of June 30 of that year.

37    (c) A probation failure rate for each county. Each county's  
38    probation failure rate shall be calculated as the number of adult  
39    felony probationers sent to prison from that county in the previous



1 year as a percentage of the county's adult felony probation  
2 population as of June 30 of that year.

3 (d) An estimate of the number of adult felony probationers each  
4 county successfully prevented from being sent to prison. For each  
5 county, this estimate shall be calculated based on the reduction  
6 in the county's probation failure rate as calculated annually  
7 pursuant to subdivision (c) of this section and the county's baseline  
8 probation failure rate as calculated pursuant to Section 1233. In  
9 making this estimate, the Director of Finance, in consultation with  
10 the Department of Corrections and Rehabilitation, the Joint  
11 Legislative Budget Committee, the Chief Probation Officers of  
12 California, and the Administrative Office of the Courts, shall adjust  
13 the calculations to account for changes in each county's adult  
14 felony probation caseload in the most recent completed calendar  
15 year as compared to the county's adult felony probation population  
16 during the period 2006 to 2008, inclusive.

17 (e) In calculating probation failure rates for the state and  
18 individual counties, the number of adult felony probationers sent  
19 to prison shall include those adult felony probationers sent to state  
20 prison for a revocation of probation, as well as adult felony  
21 probationers sent to state prison for a conviction of a new felony  
22 offense. The calculation shall also include adult felony  
23 probationers who are sent to prison for conviction of a new crime  
24 and who simultaneously have their probation terms terminated.

25 1233.2. Annually, after the conclusion of each calendar year,  
26 the Director of Finance, in consultation with the Department of  
27 Corrections and Rehabilitation, the Joint Legislative Budget  
28 Committee, the Chief Probation Officers of California, and the  
29 Administrative Office of the Courts, shall identify the appropriate  
30 Probation Revocation Tier for each county for which it was  
31 estimated that the county successfully prevented any number of  
32 adult felony probationers from being sent to state prison, as  
33 provided in subdivision (d) of Section 1233.1. The tiers shall be  
34 defined as follows:

35 (a) Tier 1. A Tier 1 county is one which has a probation failure  
36 rate, as defined in subdivision (c) of Section 1233.1, that is no  
37 more than 25 percent higher than the statewide probation failure  
38 rate, as defined in subdivision (b) of Section 1233.1.

39 (b) Tier 2. A Tier 2 county is one which has a probation failure  
40 rate, as defined in subdivision (c) of Section 1233.1, that is more

1 *than 25 percent above the statewide probation failure rate, as*  
2 *defined in subdivision (b) of Section 1233.1.*

3 *1233.3. Annually, the Director of Finance, in consultation with*  
4 *the Department of Corrections and Rehabilitation, the Joint*  
5 *Legislative Budget Committee, the Chief Probation Officers of*  
6 *California, and the Administrative Office of the Courts, shall*  
7 *calculate a probation failure reduction incentive payment for each*  
8 *eligible county, pursuant to Section 1233.2, for the most recently*  
9 *completed calendar year, as follows:*

10 *(a) For a county identified as being in Tier 1, as defined in*  
11 *subdivision (a) of Section 1233.2, its probation failure reduction*  
12 *incentive payment shall equal the estimated number of probationers*  
13 *successfully prevented from being sent to prison, as defined by*  
14 *subdivision (d) of Section 1233.1, multiplied by 45 percent of the*  
15 *costs to the state to incarcerate in prison and supervise on parole*  
16 *a probationer who was sent to prison, as defined in subdivision*  
17 *(a) of Section 1233.1.*

18 *(b) For a county identified as being in Tier 2, as defined in*  
19 *subdivision (b) of Section 1233.2, its probation failure reduction*  
20 *incentive payment shall equal the estimated number of probationers*  
21 *successfully prevented from being sent to prison, as defined by*  
22 *subdivision (d) of Section 1233.1, multiplied by 40 percent of the*  
23 *costs to the state to incarcerate in prison and supervise on parole*  
24 *a probationer who was sent to prison, as defined in subdivision*  
25 *(a) of Section 1233.1.*

26 *1233.4. (a) It is the intent of the Legislature for counties*  
27 *demonstrating high success rates with adult felony probationers*  
28 *to have access to performance-based funding, as provided for in*  
29 *this section.*

30 *(b) On an annual basis, the Department of Finance, in*  
31 *consultation with the Department of Corrections and*  
32 *Rehabilitation, the Joint Legislative Budget Committee, the Chief*  
33 *Probation Officers of California, and the Administrative Office of*  
34 *the Courts, shall calculate 5 percent of the savings to the state*  
35 *attributed to those counties that successfully reduce the number*  
36 *of adult felony probationers sent to state prison.*

37 *(c) The savings estimated pursuant to subdivision (b) shall be*  
38 *used to provide high performance grants to county probation*  
39 *departments for the purpose of bolstering evidence-based probation*

1 *practices designed to reduce recidivism among adult felony*  
2 *probationers.*

3 *(d) County probation departments eligible for these high*  
4 *performance grants shall be those with adult probation failure*  
5 *rates more than 50 percent below the statewide average in the*  
6 *most recently completed calendar year.*

7 *(e) A county probation department may receive a high*  
8 *performance grant under this section in a year in which it does*  
9 *not also receive a probation failure reduction incentive payment*  
10 *as provided for in Section 1233.3. The CPO of a county that*  
11 *qualifies for both a high performance grant and a probation failure*  
12 *reduction incentive payment shall indicate to the Administrative*  
13 *Office of the Courts, by a date designated by the Administrative*  
14 *Office of the Courts, whether the CPO chooses to receive the high*  
15 *performance grant or probation failure reduction payment.*

16 *(f) The grants provided for in this section shall be administered*  
17 *by the Administrative Office of the Courts. The Administrative*  
18 *Office of the Courts shall seek to ensure that all qualifying*  
19 *probation departments that submit qualifying applications receive*  
20 *a proportionate share of the grant funding available based on the*  
21 *population of adults ages 18 to 25, inclusive, in each of the counties*  
22 *receiving the grants.*

23 *1233.5. If data of sufficient quality and of the types required*  
24 *for the implementation of this act are not available to the Director*  
25 *of Finance, then the Director of Finance, in consultation with the*  
26 *Department of Corrections and Rehabilitation, the Joint Legislative*  
27 *Budget Committee, and the Administrative Office of the Courts,*  
28 *shall use the best available data to estimate probation failure*  
29 *reduction incentive payments and high performance grants utilizing*  
30 *a methodology that is as consistent with that described in this act*  
31 *as is reasonably possible.*

32 *1233.6. (a) Probation failure reduction incentive payments*  
33 *and high performance grants calculated for any calendar year*  
34 *shall be provided to counties in the following fiscal year. The total*  
35 *annual payment to each county shall be divided into four equal*  
36 *quarterly payments.*

37 *(b) The Department of Finance shall include an estimate of the*  
38 *total probation failure reduction incentive payments and high*  
39 *performance grants to be provided to counties in the coming fiscal*  
40 *year as part of the Governor's proposed budget released no later*

1 *than January 10 of each year. This estimate shall be adjusted by*  
2 *the Department of Finance, as necessary, to reflect the actual*  
3 *calculations of probation revocation incentive payments and high*  
4 *performance grants completed by the Director of Finance, in*  
5 *consultation with the Department of Corrections and*  
6 *Rehabilitation, the Joint Legislative Budget Committee, the Chief*  
7 *Probation Officers of California, and the Administrative Office of*  
8 *the Courts. This adjustment shall occur as part of standard budget*  
9 *revision processes completed by the Department of Finance in*  
10 *April and May of each year.*

11 *(c) There is hereby established a State Community Corrections*  
12 *Performance Incentives Fund. Moneys budgeted for purposes of*  
13 *providing probation revocation incentive payments and high*  
14 *performance grants authorized in Sections 1230 to 1233.6,*  
15 *inclusive, shall be deposited into this fund. Any moneys deposited*  
16 *into this fund shall be administered by the Administrative Office*  
17 *of the Courts and the share calculated for each county probation*  
18 *department shall be transferred to its Community Corrections*  
19 *Performance Incentives Fund authorized in Section 1230. The*  
20 *Legislature may allocate up to 3 percent of the funds annually*  
21 *deposited into the State Community Corrections Performance*  
22 *Incentives Fund for use by the Administrative Office of the Courts*  
23 *for the costs of administering this program.*

24 *1233.7. The moneys appropriated pursuant to this chapter*  
25 *shall be used to supplement, not supplant, any other state or county*  
26 *appropriation for the chief probation officer or the probation*  
27 *department.*

28 *1233.8. This chapter shall remain in effect only until January*  
29 *1, 2015, and as of that date is repealed, unless a later enacted*  
30 *statute, that is enacted before January 1, 2015, deletes or extends*  
31 *that date.*

32 *SEC. 305. Section 2932 of the Penal Code is amended to read:*

33 *2932. (a) (1) For any time credit accumulated pursuant to*  
34 *Section 2931 or to Section 2933, not more than 360 days of credit*  
35 *may be denied or lost for a single act of murder, attempted murder,*  
36 *solicitation of murder, manslaughter, rape, sodomy, or oral*  
37 *copulation accomplished against the victim's will, attempted rape,*  
38 *attempted sodomy, or attempted oral copulation accomplished*  
39 *against the victim's will, assault or battery causing serious bodily*  
40 *injury, assault with a deadly weapon or caustic substance, taking*

1 of a hostage, escape with force or violence, or possession or  
2 manufacture of a deadly weapon or explosive device, whether or  
3 not prosecution is undertaken for purposes of this paragraph.  
4 Solicitation of murder shall be proved by the testimony of two  
5 witnesses, or of one witness and corroborating circumstances.

6 (2) *Not more than 360 days of credit shall be denied or lost for*  
7 *the willful failure to return to the place of detention, unauthorized*  
8 *departure from the place of detention, or tampering, disabling, or*  
9 *attempted tampering or disabling of an electronic monitoring*  
10 *device, for participants in an alternative custody program as*  
11 *provided in Section 1170.05.*

12 ~~(2)~~

13 (3) Not more than 180 days of credit may be denied or lost for  
14 a single act of misconduct, except as specified in paragraph (1),  
15 which could be prosecuted as a felony whether or not prosecution  
16 is undertaken.

17 ~~(3)~~

18 (4) Not more than 90 days of credit may be denied or lost for a  
19 single act of misconduct which could be prosecuted as a  
20 misdemeanor, whether or not prosecution is undertaken.

21 ~~(4)~~

22 (5) Not more than 30 days of credit may be denied or lost for a  
23 single act of misconduct defined by regulation as a serious  
24 disciplinary offense by the Department of Corrections. Any person  
25 confined due to a change in custodial classification following the  
26 commission of any serious disciplinary infraction shall, in addition  
27 to any loss of time credits, be ineligible to receive participation or  
28 worktime credit for a period not to exceed the number of days of  
29 credit which have been lost for the act of misconduct or 180 days,  
30 whichever is less. Any person confined in a secure housing unit  
31 for having committed any misconduct specified in paragraph (1)  
32 in which great bodily injury is inflicted upon a nonprisoner, *or any*  
33 *person who willfully fails to return to the place of detention,*  
34 *departs from the place of detention without authorization, or*  
35 *tampers, disables, or attempts to tamper or disable an electronic*  
36 *monitoring device while participating in an alternative custody*  
37 *program as provided in Section 1170.05,* shall, in addition to any  
38 loss of time credits, be ineligible to receive participation or  
39 worktime credit for a period not to exceed the number of days of  
40 credit which have been lost for that act of misconduct, ~~or for the~~

1 ~~period that the prisoner is confined in a secure housing unit,~~  
2 ~~whichever is less.~~ In unusual cases, an inmate may be denied the  
3 opportunity to participate in a credit qualifying assignment for up  
4 to six months beyond the period specified in this subdivision if  
5 the Director of Corrections finds, after a hearing, that no credit  
6 qualifying program may be assigned to the inmate without creating  
7 a substantial risk of physical harm to staff or other inmates. At the  
8 end of the six-month period and of successive six-month periods,  
9 the denial of the opportunity to participate in a credit qualifying  
10 assignment may be renewed upon a hearing and finding by the  
11 director.

12 The prisoner may appeal the decision through the department's  
13 review procedure, which shall include a review by an individual  
14 independent of the institution who has supervisory authority over  
15 the institution.

16 (b) For any credit accumulated pursuant to Section 2931, not  
17 more than 30 days of participation credit may be denied or lost for  
18 a single failure or refusal to participate. Any act of misconduct  
19 described by the Department of Corrections as a serious  
20 disciplinary infraction if committed while participating in work,  
21 educational, vocational, therapeutic, or other prison activity shall  
22 be deemed a failure to participate.

23 (c) Any procedure not provided for by this section, but necessary  
24 to carry out the purposes of this section, shall be those procedures  
25 provided for by the Department of Corrections for serious  
26 disciplinary infractions if those procedures are not in conflict with  
27 this section.

28 (1) (A) The Department of Corrections shall, using reasonable  
29 diligence to investigate, provide written notice to the prisoner. The  
30 written notice shall be given within 15 days after the discovery of  
31 information leading to charges that may result in a possible denial  
32 of credit, except that if the prisoner has escaped, the notice shall  
33 be given within 15 days of the prisoner's return to the custody of  
34 the Director of Corrections. The written notice shall include the  
35 specific charge, the date, the time, the place that the alleged  
36 misbehavior took place, the evidence relied upon, a written  
37 explanation of the procedures that will be employed at the  
38 proceedings and the prisoner's rights at the hearing. The hearing  
39 shall be conducted by an individual who shall be independent of  
40 the case and shall take place within 30 days of the written notice.

1 (B) The Department of Corrections may delay written notice  
2 beyond 15 days when all of the following factors are true:

3 (i) An act of misconduct is involved which could be prosecuted  
4 as murder, attempted murder, or assault on a prison employee,  
5 whether or not prosecution is undertaken.

6 (ii) Further investigation is being undertaken for the purpose of  
7 identifying other prisoners involved in the misconduct.

8 (iii) Within 15 days after the discovery of information leading  
9 to charges that may result in a possible denial of credit, the  
10 investigating officer makes a written request to delay notifying  
11 that prisoner and states the reasons for the delay.

12 (iv) The warden of the institution approves of the delay in  
13 writing.

14 The period of delay under this paragraph shall not exceed 30  
15 days. The prisoner's hearing shall take place within 30 days of the  
16 written notice.

17 (2) The prisoner may elect to be assigned an employee to assist  
18 in the investigation, preparation, or presentation of a defense at  
19 the disciplinary hearing if it is determined by the department that:

20 (i) the prisoner is illiterate; or (ii) the complexity of the issues or  
21 the prisoner's confinement status makes it unlikely that the prisoner  
22 can collect and present the evidence necessary for an adequate  
23 comprehension of the case.

24 (3) The prisoner may request witnesses to attend the hearing  
25 and they shall be called unless the person conducting the hearing  
26 has specific reasons to deny this request. The specific reasons shall  
27 be set forth in writing and a copy of the document shall be  
28 presented to the prisoner.

29 (4) The prisoner has the right, under the direction of the person  
30 conducting the hearing, to question all witnesses.

31 (5) At the conclusion of the hearing the charge shall be  
32 dismissed if the facts do not support the charge, or the prisoner  
33 may be found guilty on the basis of a preponderance of the  
34 evidence.

35 (d) If found guilty the prisoner shall be advised in writing of  
36 the guilty finding and the specific evidence relied upon to reach  
37 this conclusion and the amount of time-credit loss. The prisoner  
38 may appeal the decision through the Department of Corrections'  
39 review procedure, and may, upon final notification of appeal denial,  
40 within 15 days of the notification demand review of the

1 department's denial of credit to the Board of Prison Terms, and  
2 the board may affirm, reverse, or modify the department's decision  
3 or grant a hearing before the board at which hearing the prisoner  
4 shall have the rights specified in Section 3041.5.

5 (e) Each prisoner subject to Section 2931 shall be notified of  
6 the total amount of good behavior and participation credit which  
7 may be credited pursuant to Section 2931, and his or her anticipated  
8 time-credit release date. The prisoner shall be notified of any  
9 change in the anticipated release date due to denial or loss of  
10 credits, award of worktime credit, under Section 2933, or the  
11 restoration of any credits previously forfeited.

12 (f) If the conduct the prisoner is charged with also constitutes  
13 a crime, the Department of Corrections may refer the case to  
14 criminal authorities for possible prosecution. The department shall  
15 notify the prisoner, who may request postponement of the  
16 disciplinary proceedings pending the referral.

17 The prisoner may revoke his or her request for postponement of  
18 the disciplinary proceedings up until the filing of the accusatory  
19 pleading. In the event of the revocation of the request for  
20 postponement of the proceeding, the department shall hold the  
21 hearing within 30 days of the revocation.

22 Notwithstanding the notification requirements in this paragraph  
23 and subparagraphs (A) and (B) of paragraph (1) of subdivision  
24 (c), in the event the case is referred to criminal authorities for  
25 prosecution and the authority requests that the prisoner not be  
26 notified so as to protect the confidentiality of its investigation, no  
27 notice to the prisoner shall be required until an accusatory pleading  
28 is filed with the court, or the authority notifies the warden, in  
29 writing, that it will not prosecute or it authorizes the notification  
30 of the prisoner. The notice exceptions provided for in this  
31 paragraph shall only apply if the criminal authority requests of the  
32 warden, in writing, and within the 15 days provided in  
33 subparagraph (A) of paragraph (1) of subdivision (c), that the  
34 prisoner not be notified. Any period of delay of notice to the  
35 prisoner shall not exceed 30 days beyond the 15 days referred to  
36 in subdivision (c). In the event that no prosecution is undertaken,  
37 the procedures in subdivision (c) shall apply, and the time periods  
38 set forth in that subdivision shall commence to run from the date  
39 the warden is notified in writing of the decision not to prosecute.  
40 In the event the authority either cancels its requests that the prisoner



1 not be notified before it makes a decision on prosecution or files  
2 an accusatory pleading, the provisions of this paragraph shall apply  
3 as if no request had been received, beginning from the date of the  
4 cancellation or filing.

5 In the case where the prisoner is prosecuted by the district  
6 attorney, the Department of Corrections shall not deny time credit  
7 where the prisoner is found not guilty and may deny credit if the  
8 prisoner is found guilty, in which case the procedures in  
9 subdivision (c) shall not apply.

10 (g) If time credit denial proceedings or criminal prosecution  
11 prohibit the release of a prisoner who would have otherwise been  
12 released, and the prisoner is found not guilty of the alleged  
13 misconduct, the amount of time spent incarcerated, in excess of  
14 what the period of incarceration would have been absent the alleged  
15 misbehavior, shall be deducted from the prisoner's parole period.

16 (h) Nothing in the amendments to this section made at the  
17 1981–82 Regular Session of the Legislature shall affect the granting  
18 or revocation of credits attributable to that portion of the prisoner's  
19 sentence served prior to January 1, 1983.

20 *SEC. 306. Section 2933 of the Penal Code is amended to read:*

21 2933. (a) It is the intent of the Legislature that persons  
22 convicted of a crime and sentenced to the state prison under Section  
23 1170 serve the entire sentence imposed by the court, except for a  
24 reduction in the time served in the custody of the ~~Director of~~  
25 ~~Corrections for performance in work, training or education~~  
26 ~~programs established by the Director of Corrections. Worktime~~  
27 ~~credits shall apply for performance in work assignments and~~  
28 ~~performance in elementary, high school, or vocational education~~  
29 ~~programs. Enrollment in a two- or four-year college program~~  
30 ~~leading to a degree shall result in the application of time credits~~  
31 ~~equal to that provided in Section 2931.~~ *Secretary of the Department*  
32 *of Corrections and Rehabilitation pursuant to this section and*  
33 *Section 2933.05. For*

34 (b) ~~For every six months of full-time performance in a credit~~  
35 ~~qualifying program, as designated by the director continuous~~  
36 ~~incarceration, a prisoner shall be awarded worktime credit~~  
37 ~~reductions from his or her term of confinement of six months. A~~  
38 ~~lesser amount of credit based on this ratio shall be awarded for~~  
39 ~~any lesser period of continuous performance. Less than maximum~~  
40 ~~credit incarceration. Credit should be awarded pursuant to~~

1 regulations adopted by the director for prisoners not assigned to a  
2 full-time credit qualifying program. Every prisoner who refuses  
3 to accept a full-time credit qualifying assignment or who is  
4 *secretary*. Prisoners who are denied the opportunity to earn  
5 worktime credits pursuant to subdivision (a) of Section 2932 shall  
6 be awarded no worktime credit reduction pursuant to this section.  
7 Every prisoner who voluntarily accepts a half-time credit qualifying  
8 assignment in lieu of a full-time assignment shall be awarded  
9 worktime credit reductions from his or her term of confinement  
10 of three months for each six-month period of continued  
11 performance. Except as provided in subdivision (a) of Section  
12 2932, every prisoner willing to participate in a full-time credit  
13 qualifying assignment but who is either not assigned to a full-time  
14 assignment or is assigned to a program for less than full time, shall  
15 receive no less credit than is provided under Section 2931. Under  
16 no circumstances shall any prisoner receive more than six months'  
17 credit reduction for any six-month period under this section.

18 (b)

19 (c) ~~Worktime credit~~ Credit is a privilege, not a right. ~~Worktime~~  
20 ~~credit~~ Credit must be earned and may be forfeited pursuant to the  
21 provisions of Section 2932. Except as provided in subdivision (a)  
22 of Section 2932, every *eligible* prisoner shall have a reasonable  
23 opportunity to participate in a full-time credit qualifying assignment  
24 in a manner consistent with institutional security and available  
25 resources.

26 (e)

27 (d) Under regulations adopted by the Department of Corrections  
28 and Rehabilitation, which shall require a period of not more than  
29 one year free of disciplinary infractions, ~~worktime~~ credit which  
30 has been previously forfeited may be restored by the ~~director~~  
31 *secretary*. The regulations shall provide for separate classifications  
32 of serious disciplinary infractions as they relate to restoration of  
33 credits, the time period required before forfeited credits or a portion  
34 thereof may be restored, and the percentage of forfeited credits  
35 that may be restored for these time periods. For credits forfeited  
36 for ~~commission of a felony~~ as specified in paragraph (1) of  
37 subdivision (a) of Section 2932, the Department of Corrections  
38 and Rehabilitation may provide that up to 180 days of lost credit  
39 shall not be restored and up to 90 days of credit shall not be  
40 restored for a forfeiture resulting from conspiracy or attempts to

1 commit one of those acts. No credits may be restored if they were  
2 forfeited for a serious disciplinary infraction in which the victim  
3 died or was permanently disabled. Upon application of the prisoner  
4 and following completion of the required time period free of  
5 disciplinary offenses, forfeited credits eligible for restoration under  
6 the regulations for disciplinary offenses other than serious  
7 disciplinary infractions punishable by a credit loss of more than  
8 90 days shall be restored unless, at a hearing, it is found that the  
9 prisoner refused to accept or failed to perform in a credit qualifying  
10 assignment, or extraordinary circumstances are present that require  
11 that credits not be restored. "Extraordinary circumstances" shall  
12 be defined in the regulations adopted by the ~~director~~ *secretary*.  
13 However, in any case in which ~~worktime~~ credit was forfeited for  
14 a serious disciplinary infraction punishable by a credit loss of more  
15 than 90 days, restoration of credit shall be at the discretion of the  
16 ~~director~~ *secretary*.

17 The prisoner may appeal the finding through the Department of  
18 Corrections *and Rehabilitation's* review procedure, which shall  
19 include a review by an individual independent of the institution  
20 who has supervisory authority over the institution.

21 *(e) A prisoner sentenced to the state prison under Section 1170*  
22 *shall receive one day of credit for every day served in a county*  
23 *jail, city jail, industrial farm, or road camp after the date he or*  
24 *she was sentenced to the state prison as specified in subdivision*  
25 *(g) of Section 4019.*

26 ~~(d)~~

27 *(f) The provisions of subdivision ~~(e)~~ (d) shall also apply in cases*  
28 *of credit forfeited under Section 2931 for offenses and serious*  
29 *disciplinary infractions occurring on or after January 1, 1983.*

30 *SEC. 307. Section 2933.05 is added to the Penal Code, to read:*

31 *2933.05. (a) In addition to any credit awarded pursuant to*  
32 *Section 2933, the department may also award a prisoner program*  
33 *credit reductions from his or her term of confinement as provided*  
34 *in this section. Within 90 days of the enactment of this section, the*  
35 *secretary shall promulgate regulations that provide for credit*  
36 *reductions for inmates who successfully complete specific program*  
37 *performance objectives for approved rehabilitative programming*  
38 *ranging in credit reduction of not less than one week to credit*  
39 *reduction of no more than six weeks for each performance*  
40 *milestone. Regulations promulgated pursuant to this subdivision*

1 shall specify the credit reductions applicable to distinct objectives  
2 in a schedule of graduated program performance objectives  
3 concluding with the successful completion of an in-prison  
4 rehabilitation program. Commencing upon the promulgation of  
5 those regulations, the department shall thereafter calculate and  
6 award credit reductions authorized by this section. However, a  
7 prisoner may not have his or her term of imprisonment reduced  
8 more than six weeks for credits awarded pursuant to this section  
9 during any 12-month period of continuous confinement.

10 (b) Program credit is a privilege, not a right. Prisoners shall  
11 have a reasonable opportunity to participate in program credit  
12 qualifying assignments in a manner consistent with institutional  
13 security and available resources. Assignments made to program  
14 credit qualifying programs shall be made in accordance with the  
15 prisoner's case plan, when available.

16 (c) As used in this section, "approved rehabilitation  
17 programming" shall include, but is not limited to, academic  
18 programs, vocational programs, vocational training, and core  
19 programs such as anger management and social life skills, and  
20 substance abuse programs.

21 (d) Credits awarded pursuant to this section may be forfeited  
22 pursuant to the provisions of Section 2932. Inmates shall not be  
23 eligible for program credits that result in an inmate overdue for  
24 release.

25 (e) The following prisoners shall not be eligible for program  
26 credits pursuant to this section:

27 (1) Any person serving a term of imprisonment for an offense  
28 specified in subdivision (c) of Section 667.5.

29 (2) Any person sentenced to state prison pursuant to Section  
30 1170.12 or subdivisions (b) to (i), inclusive, of Section 667.

31 (3) Any person required to register as a sex offender pursuant  
32 to Chapter 5.5 (commencing with Section 290) of Title 9 of Part  
33 1.

34 (4) Any person serving a term of imprisonment as a result of a  
35 violation of parole without a new term.

36 SEC. 308. Section 2933.2 of the Penal Code is amended to  
37 read:

38 2933.2. (a) Notwithstanding Section 2933.1 or any other law,  
39 any person who is convicted of murder, as defined in Section 187,

1 shall not accrue any credit, as specified in Section 2933 or Section  
2 2933.05.

3 (b) The limitation provided in subdivision (a) shall apply  
4 whether the defendant is sentenced under Chapter 4.5 (commencing  
5 with Section 1170) of Title 7 of Part 2 or sentenced under some  
6 other law.

7 (c) Notwithstanding Section 4019 or any other provision of law,  
8 no credit pursuant to Section 4019 may be earned against a period  
9 of confinement in, or commitment to, a county jail, industrial farm,  
10 or road camp, or a city jail, industrial farm, or road camp, following  
11 arrest for any person specified in subdivision (a).

12 (d) This section shall only apply to murder that is committed  
13 on or after the date on which this section becomes operative.

14 *SEC. 309. Section 2933.3 of the Penal Code is amended to*  
15 *read:*

16 2933.3. (a) Notwithstanding any other ~~provision of law~~, any  
17 inmate assigned to a conservation camp by the Department of  
18 Corrections and Rehabilitation, who is eligible to earn one day of  
19 ~~worktime~~ credit for every one day of ~~service~~ incarceration pursuant  
20 to Section 2933 shall instead earn two days of ~~worktime~~ credit for  
21 every one day of service. ~~This~~ The enhanced ~~worktime~~ credit  
22 authorized pursuant to this subdivision shall only apply to ~~service~~  
23 ~~performed~~ those prisoners eligible after January 1, 2003.

24 (b) Notwithstanding any other law, any inmate who has  
25 completed training for assignment to a conservation camp or to  
26 a correctional institution as an inmate firefighter or who is  
27 assigned to a correctional institution as an inmate firefighter and  
28 who is eligible to earn one day of credit for every one day of  
29 incarceration pursuant to Section 2933 shall instead earn two  
30 days of credit for every one day served in that assignment or after  
31 completing that training.

32 (c) In addition to credits granted pursuant to subdivision (a) or  
33 (b), inmates who have successfully completed training for  
34 firefighter assignments shall receive a credit reduction from his  
35 or her term of confinement pursuant to regulations adopted by the  
36 secretary.

37 (d) The credits authorized in subdivisions (b) and (c) shall only  
38 apply to inmates who are eligible after July 1, 2009.

39 *SEC. 310. Section 2933.4 of the Penal Code is amended and*  
40 *renumbered to read:*

1     ~~2933.4.~~

2     3050. (a) Notwithstanding any other provision of law, any  
3 inmate under the custody of the Department of Corrections and  
4 Rehabilitation who is not currently serving and has not served a  
5 prior indeterminate sentence or a sentence for a violent felony, a  
6 ~~serious felony~~, or a crime that requires him or her to register as a  
7 sex offender pursuant to Section 290, who has successfully  
8 completed an in prison drug treatment program, upon release from  
9 state prison, shall, whenever possible, be entered into a 150-day  
10 residential aftercare drug treatment program sanctioned by the  
11 department.

12     (b) As a condition of parole, if the inmate successfully completes  
13 150 days of residential aftercare treatment, as determined by the  
14 Department of Corrections and Rehabilitation and the aftercare  
15 provider, the parolee shall be discharged from parole supervision  
16 at that time.

17     (c) Commencing with 2008, the department shall report annually  
18 to the Joint Legislative Budget Committee and the State Auditor  
19 on the effectiveness of these provisions, including recidivism rates.

20     *SEC. 311. Section 2933.5 of the Penal Code is amended to*  
21 *read:*

22     2933.5. (a) (1) Notwithstanding any other ~~provision of~~ law,  
23 every person who is convicted of any felony offense listed in  
24 paragraph (2), and who previously has been convicted two or more  
25 times, on charges separately brought and tried, and who previously  
26 has served two or more separate prior prison terms, as defined in  
27 subdivision (g) of Section 667.5, of any offense or offenses listed  
28 in paragraph (2), shall be ineligible to earn credit on his or her  
29 term of imprisonment pursuant to this ~~chapter~~ article.

30     (2) As used in this subdivision, “felony offense” includes any  
31 of the following:

32     (A) Murder, as defined in Sections 187 and 189.

33     (B) Voluntary manslaughter, as defined in subdivision (a) of  
34 Section 192.

35     (C) Mayhem as defined in Section 203.

36     (D) Aggravated mayhem, as defined in Section 205.

37     (E) Kidnapping, as defined in Section 207, 209, or 209.5.

38     (F) Assault with vitriol, corrosive acid, or caustic chemical of  
39 any nature, as described in Section 244.

1 (G) Rape, as defined in paragraph (2) or (6) of subdivision (a)  
2 of Section 261 or paragraph (1) or (4) of subdivision (a) of Section  
3 262.

4 (H) Sodomy by means of force, violence, duress, menace or  
5 fear of immediate and unlawful bodily injury on the victim or  
6 another person, as described in subdivision (c) of Section 286.

7 (I) Sodomy while voluntarily acting in concert, as described in  
8 subdivision (d) of Section 286.

9 (J) Lewd or lascivious acts on a child under the age of 14 years,  
10 as described in subdivision (b) of Section 288.

11 (K) Oral copulation by means of force, violence, duress, menace,  
12 or fear of immediate and unlawful bodily injury on the victim or  
13 another person, as described in subdivision (c) of Section 288a.

14 (L) Continuous sexual abuse of a child, as described in Section  
15 288.5.

16 (M) Sexual penetration, as described in subdivision (a) of  
17 Section 289.

18 (N) Exploding a destructive device or explosive with intent to  
19 injure, as described in Section 12303.3, with intent to murder, as  
20 described in Section 12308, or resulting in great bodily injury or  
21 mayhem, as described in Section 12309.

22 (O) Any felony in which the defendant personally inflicted great  
23 bodily injury, as provided in Section 12022.53 or 12022.7.

24 (b) A prior conviction of an offense listed in subdivision (a)  
25 shall include a conviction in another jurisdiction for an offense  
26 which includes all of the elements of the particular felony as  
27 defined under California law.

28 (c) This section shall apply whenever the present felony is  
29 committed on or after the effective date of this section, regardless  
30 of the date of commission of the prior offense or offenses resulting  
31 in credit-earning ineligibility.

32 (d) This section shall be in addition to, and shall not preclude  
33 the imposition of, any applicable sentence enhancement terms, or  
34 probation ineligibility and habitual offender provisions authorized  
35 under any other section.

36 *SEC. 312. Section 2933.6 of the Penal Code is amended to*  
37 *read:*

38 2933.6. (a) Notwithstanding any other law, a person who is  
39 placed in a Security Housing Unit, *Psychiatric Services Unit*,  
40 *Behavioral Management Unit*, or an Administrative Segregation

1 Unit for misconduct described in subdivision (b) *or upon validation*  
2 *as a prison gang member or associate* is ineligible to earn ~~work~~  
3 ~~credits or good behavior~~ credits pursuant to Section 2933 or  
4 2933.05 during the time he or she is in the Security Housing Unit,  
5 *Psychiatric Services Unit, Behavioral Management Unit*, or the  
6 Administrative Segregation Unit for that misconduct.

7 (b) This section applies to the following offenses:

8 (1) Murder, attempted murder, and solicitation of murder. For  
9 purposes of this paragraph, solicitation of murder shall be proven  
10 by the testimony of two witnesses, or of one witness and  
11 corroborating circumstances.

12 (2) Manslaughter.

13 (3) Assault or battery causing serious bodily injury.

14 (4) Assault or battery on a peace officer or other nonprisoner  
15 which results in physical injury.

16 (5) Assault with a deadly weapon or caustic substance.

17 (6) Rape, attempted rape, sodomy, attempted sodomy, oral  
18 copulation, or attempted oral copulation accomplished against the  
19 victim's will.

20 (7) Taking a hostage.

21 (8) Escape or attempted escape with force or violence.

22 (9) Escape from any departmental prison or institution other  
23 than a camp or reentry facility.

24 (10) Possession or manufacture of a deadly weapon or explosive  
25 device.

26 (11) Arson involving damage to a structure.

27 (12) Possession of flammable, explosive material with intent to  
28 burn any structure or property.

29 (13) Solicitation of assault with a deadly weapon or assault by  
30 means of force likely to produce great bodily injury, arson, or a  
31 forcible sex act.

32 (14) Intentional destruction of state property in excess of four  
33 hundred dollars (\$400) during a riot or disturbance.

34 (c) This section does not apply if the administrative finding of  
35 the misconduct is overturned or if the person is criminally  
36 prosecuted for the misconduct and is found not guilty.

37 *SEC. 313. Section 2934 of the Penal Code is amended to read:*

38 2934. Under rules prescribed by the ~~Director of Corrections~~  
39 *Secretary of the Department of Corrections and Rehabilitation*, a  
40 prisoner subject to the provisions of Section 2931 may waive the



1 right to receive time credits as provided in Section 2931 and be  
2 subject to the provisions of Section 2933. In order to exercise a  
3 waiver under this section, a prisoner must apply in writing to the  
4 Department of Corrections. A prisoner exercising a waiver under  
5 this section shall retain only that portion of good behavior and  
6 participation credits, which have not been forfeited pursuant to  
7 Section 2932, attributable to the portion of the sentence served by  
8 the prisoner prior to the effective date of the waiver. A waiver  
9 under this section shall, if accepted by the department, become  
10 effective at a time to be determined by the ~~Director of the~~  
11 ~~Department of Corrections~~ *Secretary of the Department of*  
12 *Corrections and Rehabilitation*.

13 *SEC. 314. Section 2935 of the Penal Code is amended to read:*

14 2935. Under the guidelines prescribed by the rules and  
15 regulations of the director, the ~~Director of Corrections~~ *Secretary*  
16 *of the Department of Corrections and Rehabilitation* may grant  
17 up to 12 additional months of reduction of the sentence to a  
18 prisoner who has performed a heroic act in a life-threatening  
19 situation, or who has provided exceptional assistance in  
20 maintaining the safety and security of a prison.

21 *SEC. 315. Section 3000 of the Penal Code is amended to read:*

22 3000. (a) (1) The Legislature finds and declares that the period  
23 immediately following incarceration is critical to successful  
24 reintegration of the offender into society and to positive citizenship.  
25 It is in the interest of public safety for the state to provide for the  
26 *effective* supervision of and surveillance of parolees, including the  
27 judicious use of revocation actions, and to provide educational,  
28 vocational, family and personal counseling necessary to assist  
29 parolees in the transition between imprisonment and discharge. A  
30 sentence pursuant to Section 1168 or 1170 shall include a period  
31 of parole, unless waived, *or as otherwise* provided in this ~~section~~  
32 *article*.

33 (2) The Legislature finds and declares that it is not the intent of  
34 this section to diminish resources allocated to the Department of  
35 Corrections and Rehabilitation for parole functions for which the  
36 department is responsible. It is also not the intent of this section  
37 to diminish the resources allocated to the Board of Parole Hearings  
38 to execute its duties with respect to parole functions for which the  
39 board is responsible.

(3) The Legislature finds and declares that diligent effort must be made to ensure that parolees are held accountable for their criminal behavior, including, but not limited to, the satisfaction of restitution fines and orders.

(4) The parole period of any person found to be a sexually violent predator shall be tolled until that person is found to no longer be a sexually violent predator, at which time the period of parole, or any remaining portion thereof, shall begin to run.

(b) Notwithstanding any provision to the contrary in Article 3 (commencing with Section 3040) of this chapter, the following shall apply:

(1) At the expiration of a term of imprisonment of one year and one day, or a term of imprisonment imposed pursuant to Section 1170 or at the expiration of a term reduced pursuant to Section 2931 or 2933, if applicable, the inmate shall be released on parole for a period not exceeding three years, except that any inmate sentenced for an offense specified in paragraph (3), (4), (5), (6), (11), (16), or (18) of subdivision (c) of Section 667.5 shall be released on parole for a period not exceeding five years, unless in either case the parole authority for good cause waives parole and discharges the inmate from the custody of the department.

(2) In the case of any inmate sentenced under Section 1168, the period of parole shall not exceed five years in the case of an inmate imprisoned for any offense other than first or second degree murder for which the inmate has received a life sentence, and shall not exceed three years in the case of any other inmate, unless in either case the parole authority for good cause waives parole and discharges the inmate from custody of the department. This subdivision shall also be applicable to inmates who committed crimes prior to July 1, 1977, to the extent specified in Section 1170.2.

(3) Notwithstanding paragraphs (1) and (2), in the case of any offense for which the inmate has received a life sentence pursuant to Section 667.61 or 667.71, the period of parole shall be 10 years.

(4) The parole authority shall consider the request of any inmate regarding the length of his or her parole and the conditions thereof.

(5) Upon successful completion of parole, or at the end of the maximum statutory period of parole specified for the inmate under paragraph (1), (2), or (3), as the case may be, whichever is earlier, the inmate shall be discharged from custody. The date of the

1 maximum statutory period of parole under this subdivision and  
2 paragraphs (1), (2), and (3) shall be computed from the date of  
3 initial parole and shall be a period chronologically determined.  
4 Time during which parole is suspended because the prisoner has  
5 absconded or has been returned to custody as a parole violator  
6 shall not be credited toward any period of parole unless the prisoner  
7 is found not guilty of the parole violation. However, the period of  
8 parole is subject to the following:

9 (A) Except as provided in Section 3064, in no case may a  
10 prisoner subject to three years on parole be retained under parole  
11 supervision or in custody for a period longer than four years from  
12 the date of his or her initial parole.

13 (B) Except as provided in Section 3064, in no case may a  
14 prisoner subject to five years on parole be retained under parole  
15 supervision or in custody for a period longer than seven years from  
16 the date of his or her initial parole.

17 (C) Except as provided in Section 3064, in no case may a  
18 prisoner subject to 10 years on parole be retained under parole  
19 supervision or in custody for a period longer than 15 years from  
20 the date of his or her initial parole.

21 (6) The Department of Corrections and Rehabilitation shall meet  
22 with each inmate at least 30 days prior to his or her good time  
23 release date and shall provide, under guidelines specified by the  
24 parole authority, the conditions of parole and the length of parole  
25 up to the maximum period of time provided by law. The inmate  
26 has the right to reconsideration of the length of parole and  
27 conditions thereof by the parole authority. The Department of  
28 Corrections and Rehabilitation or the Board of Parole Hearings  
29 may impose as a condition of parole that a prisoner make payments  
30 on the prisoner's outstanding restitution fines or orders imposed  
31 pursuant to subdivision (a) or (c) of Section 13967 of the  
32 Government Code, as operative prior to September 28, 1994, or  
33 subdivision (b) or (f) of Section 1202.4.

34 (7) For purposes of this chapter, the Board of Parole Hearings  
35 shall be considered the parole authority.

36 (8) The sole authority to issue warrants for the return to actual  
37 custody of any state prisoner released on parole rests with the  
38 Board of Parole Hearings, except for any escaped state prisoner  
39 or any state prisoner released prior to his or her scheduled release

1 date who should be returned to custody, and Section 3060 shall  
2 apply.

3 (9) It is the intent of the Legislature that efforts be made with  
4 respect to persons who are subject to Section 290.011 who are on  
5 parole to engage them in treatment.

6 *SEC. 316. Section 3000.03 is added to the Penal Code, to read:*

7 *3000.03. Notwithstanding any other provision of law, the*  
8 *Department of Corrections and Rehabilitation shall not return to*  
9 *prison, place a parole hold on pursuant to Section 3056, or report*  
10 *any parole violation to the Board of Parole Hearings regarding*  
11 *any person to whom all of the following criteria apply:*

12 *(a) The person is not required to register as a sex offender*  
13 *pursuant to Chapter 5.5 (commencing with Section 290) of Title*  
14 *9 of Part 1.*

15 *(b) The person was not committed to prison for a serious felony*  
16 *as defined in Sections 1192.7 and 1192.8, or a violent felony, as*  
17 *defined in Section 667.5, and does not have a prior conviction for*  
18 *a serious felony, as defined in Section 1192.7 and 1192.8, or a*  
19 *violent felony, as defined in Section 667.5.*

20 *(c) The person was not committed to prison for a sexually violent*  
21 *offense as defined in subdivision (b) of Section 6600 of the Welfare*  
22 *and Institutions Code and does not have a prior conviction for a*  
23 *sexually violent offense as defined in subdivision (b) of Section*  
24 *6600 of the Welfare and Institutions Code.*

25 *(d) The person was not found guilty of a serious disciplinary*  
26 *offense, as defined in regulation by the department, during his or*  
27 *her current term of imprisonment.*

28 *(e) The person is not a validated prison gang member or*  
29 *associate, as defined in regulation by the department.*

30 *(f) The person did not refuse to sign any written notification of*  
31 *parole requirements or conditions, including, but not limited to,*  
32 *the written notification of requirements pursuant to Section 3067.*

33 *(g) The person was evaluated by the department using a*  
34 *validated risk assessment tool and was not determined to pose a*  
35 *high risk to reoffend.*

36 *SEC. 317. Article 2.3 (commencing with Section 3015) is added*  
37 *to Chapter 8 of Title 1 of Part 3 of the Penal Code, to read:*

Article 2.3. *Parole Reentry Accountability Program*

3015. (a) *The Secretary of the Department of Corrections and Rehabilitation shall establish a parole reentry accountability program for parolees who have been sentenced to a term of imprisonment under Section 1170. The purpose of the program is to promote public safety, hold parolees accountable, and reduce recidivism.*

(b) *The department shall employ a parole violation decisionmaking instrument to determine the most appropriate sanctions for these parolees who violate their conditions of parole.*

(1) *For purposes of this subdivision, a “parole violation decisionmaking instrument” means a standardized tool that provides ranges of appropriate sanctions for parole violators given relevant case factors, including, but not limited to, offense history, risk of reoffense based on a validated risk assessment tool, need for treatment services, the number and type of current and prior parole violations, and other relevant statutory requirements.*

(2) *The department shall adopt emergency regulations to implement this section initially, and shall subsequently adopt permanent regulations that make appropriate changes in policies and procedures to reflect the intent of this section.*

(c) *The secretary shall have the discretion to establish additional tools and standards to further the purposes of this section.*

(d) *Parolees subject to this program with a history of substance abuse or mental illness who violate their conditions of parole may be referred by the department to a reentry court program established pursuant to subdivision (e).*

(1) *A parolee who is deemed eligible by the department to participate in a reentry court program may be referred by his or her parole officer for participation in the program. The court shall have the discretion to determine if the parolee will be admitted into the program and, in making this determination, shall consider, among other factors, whether the parolee will benefit from the program, the risk the parolee poses to the community, and the history and nature of the committing offense.*

(2) *If the court determines that the parolee will be admitted into the program, the court, with the assistance of the parolee’s parole agent, shall have exclusive authority to determine the appropriate conditions of parole, order rehabilitation and treatment services*

1 to be provided, determine appropriate incentives, order  
2 appropriate sanctions, lift parole holds, and hear and determine  
3 appropriate responses to alleged violations, unless and until the  
4 court terminates the parolee's enrollment in the program  
5 authorized by subdivision (e).

6 (3) A reentry court program plan shall include, but not be  
7 limited to, all of the following:

8 (A) The anticipated number of parolees who will be served by  
9 the program.

10 (B) The method by which each parolee who is eligible for the  
11 program shall be referred to the program.

12 (C) The method by which each parolee is to be individually  
13 assessed as to his or her treatment and rehabilitative needs and  
14 the level of community and court monitoring required by the  
15 program.

16 (D) The criteria for continued participation in, and successful  
17 completion of, the program, as well as the criteria for termination  
18 from the program and referral to the parole revocation process.

19 (E) A description of how the program shall be administered  
20 effectively.

21 (F) An established method by which to report outcome measures  
22 for program participants.

23 (G) The development of a program team, as well as a plan for  
24 ongoing training in utilizing the drug court and collaborative court  
25 nonadversarial model.

26 (e) (1) Subject to funding made available for this purpose, the  
27 secretary shall enter into a memorandum of understanding with  
28 the Administrative Office of the Courts for the purpose of the  
29 establishment and operation of parolee reentry court programs.  
30 Only courts with existing drug and mental health courts or courts  
31 that otherwise demonstrate leadership and a commitment to  
32 conduct the reentry court authorized by this section may participate  
33 in this program. These parolee reentry court programs shall, with  
34 the assistance of the parolee's parole agent, direct the treatment  
35 and supervision of parolees who would benefit from community  
36 drug treatment or mental health treatment. The purpose of reentry  
37 court programs created pursuant to this subdivision is to promote  
38 public safety, hold parolees accountable, and reduce recidivism.  
39 The program shall include key components of drug and  
40 collaborative courts using a highly structured model, including

1 *close supervision and monitoring, dedicated calendars,*  
2 *nonadversarial proceedings, frequent drug and alcohol testing,*  
3 *and close collaboration between the respective entities involved*  
4 *to improve the parolee's likelihood of success on parole.*

5 (2) *The Judicial Council, in collaboration with the department,*  
6 *shall design and perform an evaluation of the program that will*  
7 *assess its effectiveness in reducing recidivism among parolees and*  
8 *reducing parole revocations.*

9 (3) *The Judicial Council, in collaboration with the department,*  
10 *shall submit a final report of the findings from its evaluation of*  
11 *the program to the Legislature and the Governor no later than 3*  
12 *years after the establishment of a reentry court pursuant to this*  
13 *section.*

14 *SEC. 318. Section 4019 of the Penal Code is amended to read:*

15 4019. (a) The provisions of this section shall apply in all of  
16 the following cases:

17 (1) When a prisoner is confined in or committed to a county  
18 jail, industrial farm, or road camp, or any city jail, industrial farm,  
19 or road camp, including all days of custody from the date of arrest  
20 to the date on which the serving of the sentence commences, under  
21 a judgment of imprisonment, or a fine and imprisonment until the  
22 fine is paid in a criminal action or proceeding.

23 (2) When a prisoner is confined in or committed to the county  
24 jail, industrial farm, or road camp or any city jail, industrial farm,  
25 or road camp as a condition of probation after suspension of  
26 imposition of a sentence or suspension of execution of sentence,  
27 in a criminal action or proceeding.

28 (3) When a prisoner is confined in or committed to the county  
29 jail, industrial farm, or road camp or any city jail, industrial farm,  
30 or road camp for a definite period of time for contempt pursuant  
31 to a proceeding, other than a criminal action or proceeding.

32 (4) When a prisoner is confined in a county jail, industrial farm,  
33 or road camp, or a city jail, industrial farm, or road camp following  
34 arrest and prior to the imposition of sentence for a felony  
35 conviction.

36 ~~(b) Subject~~

37 (b) (1) *Except as provided in Section 2933.1 and paragraph*  
38 *(2), subject to the provisions of subdivision (d), for each*~~*six-day*~~  
39 *four-day period in which a prisoner is confined in or committed*  
40 *to a facility as specified in this section, one day shall be deducted*

1 from his or her period of confinement unless it appears by the  
2 record that the prisoner has refused to satisfactorily perform labor  
3 as assigned by the sheriff, chief of police, or superintendent of an  
4 industrial farm or road camp.

5 *(2) If the prisoner is required to register as a sex offender*  
6 *pursuant to Chapter 5.5 (commencing with Section 290), was*  
7 *committed for a serious felony, as defined in Section 1192.7, or*  
8 *has a prior conviction for a serious felony, as defined in Section*  
9 *1192.7, or a violent felony, as defined in Section 667.5, subject to*  
10 *the provisions of subdivision (d), for each six-day period in which*  
11 *the prisoner is confined in or committed to a facility as specified*  
12 *in this section, one day shall be deducted from his or her period*  
13 *of confinement unless it appears by the record that the prisoner*  
14 *has refused to satisfactorily perform labor as assigned by the*  
15 *sheriff, chief of police, or superintendent of an industrial farm or*  
16 *road camp.*

17 ~~(e) For~~

18 *(c) (1) Except as provided in Section 2933.1 and paragraph*  
19 *(2), for each ~~six-day~~ four-day period in which a prisoner is confined*  
20 *in or committed to a facility as specified in this section, one day*  
21 *shall be deducted from his or her period of confinement unless it*  
22 *appears by the record that the prisoner has not satisfactorily*  
23 *complied with the reasonable rules and regulations established by*  
24 *the sheriff, chief of police, or superintendent of an industrial farm*  
25 *or road camp.*

26 *(2) If the prisoner is required to register as a sex offender*  
27 *pursuant to Chapter 5.5 (commencing with Section 290), was*  
28 *committed for a serious felony, as defined in Section 1192.7, or*  
29 *has a prior conviction for a serious felony, as defined in Section*  
30 *1192.7, or a violent felony, as defined in Section 667.5, for each*  
31 *six-day period in which the prisoner is confined in or committed*  
32 *to a facility as specified in this section, one day shall be deducted*  
33 *from his or her period of confinement unless it appears by the*  
34 *record that the prisoner has not satisfactorily complied with the*  
35 *reasonable rules and regulations established by the sheriff, chief*  
36 *of police, or superintendent of an industrial farm or road camp.*

37 *(d) Nothing in this section shall be construed to require the*  
38 *sheriff, chief of police, or superintendent of an industrial farm or*  
39 *road camp to assign labor to a prisoner if it appears from the record*  
40 *that the prisoner has refused to satisfactorily perform labor as*



1 assigned or that the prisoner has not satisfactorily complied with  
2 the reasonable rules and regulations of the sheriff, chief of police,  
3 or superintendent of any industrial farm or road camp.

4 (e) No deduction may be made under this section unless the  
5 person is committed for a period of ~~six~~ four days or longer, *or six*  
6 *days or longer for persons described in paragraph (2) of*  
7 *subdivision (b) or (c).*

8 (f) It is the intent of the Legislature that if all days are earned  
9 under this section, a term of ~~six~~ four days will be deemed to have  
10 been served for every ~~four~~ two days spent in actual custody, *except*  
11 *that a term of six days will be deemed to have been served for*  
12 *every four days spent in actual custody for persons described in*  
13 *paragraph (2) of subdivision (b) or (c).*

14 SEC. 319. Section 4532 of the Penal Code is amended to read:

15 4532. (a) (1) Every prisoner arrested and booked for, charged  
16 with, or convicted of a misdemeanor, and every person committed  
17 under the terms of Section 5654, 5656, or 5677 of the Welfare and  
18 Institutions Code as an inebriate, who is confined in any county  
19 or city jail, prison, industrial farm, or industrial road camp, is  
20 engaged on any county road or other county work, is in the lawful  
21 custody of any officer or person, is employed or continuing in his  
22 or her regular educational program or authorized to secure  
23 employment or education away from the place of confinement,  
24 pursuant to the Cobey Work Furlough Law (Section 1208), is  
25 authorized for temporary release for family emergencies or for  
26 purposes preparatory to his or her return to the community pursuant  
27 to Section 4018.6, or is a participant in a home detention program  
28 pursuant to Section 1203.016; *or an alternative custody program*  
29 *as provided in Section 1170.05* and who thereafter escapes or  
30 attempts to escape from the county or city jail, prison, industrial  
31 farm, or industrial road camp or from the custody of the officer or  
32 person in charge of him or her while engaged in or going to or  
33 returning from the county work or from the custody of any officer  
34 or person in whose lawful custody he or she is, or from the place  
35 of confinement in a home detention program pursuant to Section  
36 1203.016; *or an alternative custody program as provided in Section*  
37 *1170.05* is guilty of a felony and, if the escape or attempt to escape  
38 was not by force or violence, is punishable by imprisonment in  
39 the state prison for a determinate term of one year and one day, or  
40 in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for two, four, or six years to be served consecutively, or in a county jail not exceeding one year. When the second term of imprisonment is to be served in a county jail, it shall commence from the time the prisoner otherwise would have been discharged from jail.

(3) A conviction of a violation of this subdivision, or a violation of subdivision (b) involving a participant of a home detention program pursuant to Section 1203.016 *or an alternative custody program as provided in Section 1170.05*, that is not committed by force or violence, shall not be charged as a prior felony conviction in any subsequent prosecution for a public offense.

(b) (1) Every prisoner arrested and booked for, charged with, or convicted of a felony, and every person committed by order of the juvenile court, who is confined in any county or city jail, prison, industrial farm, or industrial road camp, is engaged on any county road or other county work, is in the lawful custody of any officer or person, ~~or~~ is confined pursuant to Section 4011.9, *or* is a participant in a home detention program pursuant to Section 1203.016; *or an alternative custody program as provided in Section 1170.05* who escapes or attempts to escape from a county or city jail, prison, industrial farm, or industrial road camp or from the custody of the officer or person in charge of him or her while engaged in or going to or returning from the county work or from the custody of any officer or person in whose lawful custody he or she is, ~~or~~ from confinement pursuant to Section 4011.9, or from the place of confinement in a home detention program pursuant to Section 1203.016; *or an alternative custody program as provided in Section 1170.05* is guilty of a felony and, if the escape or attempt to escape was not by force or violence, is punishable by imprisonment in the state prison for 16 months, two years, or three years, to be served consecutively, or in a county jail not exceeding one year.

(2) If the escape or attempt to escape described in paragraph (1) is committed by force or violence, the person is guilty of a felony, punishable by imprisonment in the state prison for a full term of two, four, or six years to be served consecutively to any other term of imprisonment, commencing from the time the person otherwise would have been released from imprisonment and the

1 term shall not be subject to reduction pursuant to subdivision (a)  
2 of Section 1170.1, or in a county jail for a consecutive term not to  
3 exceed one year, that term to commence from the time the prisoner  
4 otherwise would have been discharged from jail.

5 (c) (1) Except in unusual cases where the interests of justice  
6 would best be served if the person is granted probation, probation  
7 shall not be granted to any person who is convicted of a felony  
8 offense under this section in that he or she escaped or attempted  
9 to escape from a secure main jail facility, from a court building,  
10 or while being transported between the court building and the jail  
11 facility *or as a participant in an alternative custody program*  
12 *pursuant to Section 1170.05.*

13 (2) In any case in which a person is convicted of a violation of  
14 this section designated as a misdemeanor, he or she shall be  
15 confined in a county jail for not less than 90 days nor more than  
16 one year except in unusual cases where the interests of justice  
17 would best be served by the granting of probation.

18 (3) For the purposes of this subdivision, “main jail facility”  
19 means the facility used for the detention of persons pending  
20 arraignment, after arraignment, during trial, and upon sentence or  
21 commitment. The facility shall not include an industrial farm,  
22 industrial road camp, work furlough facility, or any other nonsecure  
23 facility used primarily for sentenced prisoners. As used in this  
24 subdivision, “secure” means that the facility contains an outer  
25 perimeter characterized by the use of physically restricting  
26 construction, hardware, and procedures designed to eliminate  
27 ingress and egress from the facility except through a closely  
28 supervised gate or doorway.

29 (4) If the court grants probation under this subdivision, it shall  
30 specify the reason or reasons for that order on the court record.

31 (5) Any sentence imposed under this subdivision shall be served  
32 consecutive to any other sentence in effect or pending.

33 (d) The willful failure of a prisoner, whether convicted of a  
34 felony or a misdemeanor, to return to his or her place of  
35 confinement no later than the expiration of the period that he or  
36 she was authorized to be away from that place of confinement, is  
37 an escape from that place of confinement. This subdivision applies  
38 to a prisoner who is employed or continuing in his or her regular  
39 educational program, authorized to secure employment or education  
40 pursuant to the Cobey Work Furlough Law (Section 1208),

1 authorized for temporary release for family emergencies or for  
2 purposes preparatory to his or her return to the community pursuant  
3 to Section 4018.6, or permitted to participate in a home detention  
4 program pursuant to Section 1203.016 *or an alternative custody*  
5 *program as provided in Section 1170.05*. A prisoner convicted of  
6 a misdemeanor who willfully fails to return to his or her place of  
7 confinement under this subdivision shall be punished as provided  
8 in paragraph (1) of subdivision (a). A prisoner convicted of a felony  
9 who willfully fails to return to his or her place of confinement shall  
10 be punished as provided in paragraph (1) of subdivision (b).

11 *(e) Alternatively, on or after the operative date of an applicable*  
12 *rule or rules proposed by the California Public Safety Commission,*  
13 *a person who violates this section shall be punished as provided*  
14 *in the applicable sentencing rules.*

15 *SEC. 320. Section 4600 of the Penal Code is amended to read:*

16 4600. (a) Every person who willfully and intentionally breaks  
17 down, pulls down, or otherwise destroys or injures any jail, prison,  
18 or any public property in any jail or prison, is punishable by a fine  
19 not exceeding ten thousand dollars (\$10,000), and by imprisonment  
20 in the state prison, except that where the damage or injury to any  
21 city, city and county, or county jail property or prison property is  
22 determined to be ~~four hundred dollars (\$400)~~ *nine hundred fifty*  
23 *dollars (\$950)* or less, that person is guilty of a misdemeanor.

24 (b) In any case in which a person is convicted of violating this  
25 section, the court may order the defendant to make restitution to  
26 the public entity that owns the property damaged by the defendant.  
27 The court shall specify in the order that the public entity that owns  
28 the property damaged by the defendant shall not enforce the order  
29 until the defendant satisfies all outstanding fines, penalties,  
30 assessments, restitution fines, and restitution orders.

31 *SEC. 321. Title 6.5 (commencing with Section 4950) is added*  
32 *to Part 3 of the Penal Code, to read:*

33  
34 *TITLE 6.5. SENTENCING COMMISSION*  
35

36 4950. *The Legislature hereby finds and declares all of the*  
37 *following:*

38 (a) *There are more than 1,000 felony sentencing laws and more*  
39 *than 100 felony sentence enhancements across California codes.*

1     ***(b) States with sentencing commissions have reduced overall***  
2 *crime rates by increasing penalties for the most dangerous*  
3 *offenders and expanding options for community-based sanctions*  
4 *for certain low-level, nonviolent offenders.*

5     ***(c) California currently lacks a reliable and comprehensive***  
6 *system for collecting and analyzing data related to current and*  
7 *historical sentencing practices.*

8     **4951. (a)** *In enacting this title, it is the intent of the Legislature*  
9 *to enhance public safety, promote effective crime reduction*  
10 *strategies, base California's sentencing practices on principles of*  
11 *fairness, justice, and accountability, and ensure that public*  
12 *resources and taxpayer dollars are expended in a way that most*  
13 *successfully protects the public from crime and reduces criminal*  
14 *recidivism.*

15     ***(b) It is the further intent of the Legislature to create the***  
16 *California Public Safety Commission comprised of individuals*  
17 *who will provide a reasoned, balanced, and experienced*  
18 *perspective to achieve sentencing practices that are grounded in*  
19 *data and based on sound policy.*

20     ***(c) The general purposes of rules that become operative***  
21 *pursuant to this title are the following:*

22     ***(1) In decisions affecting the sentencing or paroling of individual***  
23 *offenders, all of the following:*

24     ***(A) To render sentences in all cases within a range of severity***  
25 *proportionate to the gravity of offenses, the harms done to crime*  
26 *victims, and the blameworthiness of offenders.*

27     ***(B) When reasonably feasible, to achieve offender rehabilitation,***  
28 *general deterrence, incapacitation of dangerous offenders,*  
29 *restoration of crime victims and communities, and reintegration*  
30 *of offenders into the law-abiding community, provided these goals*  
31 *are pursued within the boundaries of proportionality in*  
32 *subparagraph (A).*

33     ***(C) To render sentences no more severe than necessary to***  
34 *achieve the applicable purposes in subparagraphs (A) and (B).*

35     ***(2) In matters affecting the administration of the sentencing***  
36 *system, all of the following:*

37     ***(A) To preserve judicial discretion to individualize sentences***  
38 *within a framework of law.*

39     ***(B) To produce sentences that are uniform in their reasoned***  
40 *pursuit of the purposes in paragraph (1).*

1 (C) To eliminate inequities in sentencing across population  
2 groups, including geographic regions.

3 (D) To encourage the use of intermediate sanctions consistent  
4 with the protection of public safety.

5 (E) To ensure that adequate resources are available for carrying  
6 out sentences imposed.

7 (F) To ensure that all criminal sanctions are administered  
8 effectively and that incarcerated offenders are provided  
9 constitutionally sufficient levels of subsistence, personal safety,  
10 medical and mental health care, and opportunities to rehabilitate  
11 themselves.

12 (G) To promote research on sentencing policy and practices,  
13 including assessments of the effectiveness of criminal sanctions  
14 as measured against their purposes, and the effects of criminal  
15 sanctions upon families and communities.

16 (H) To increase the transparency of the sentencing and  
17 corrections system, its accountability to the public, and the  
18 legitimacy of its operations as perceived by all affected  
19 communities.

20 4952. (a) There is hereby established the California Public  
21 Safety Commission, a permanent, independent agency in state  
22 government. Every reference in the California codes to a  
23 sentencing commission is to the California Public Safety  
24 Commission.

25 (b) The sentencing commission shall do all of the following:

26 (1) Develop rules as provided in Sections 4954 and 4955.

27 (2) Collaborate over time with the trial and appellate courts in  
28 the development of a common law of sentencing within the  
29 legislative framework.

30 (3) Provide a balanced forum for statewide policy development,  
31 information development, research, and planning concerning  
32 criminal sentences and their effects.

33 (4) Assemble and draw upon sources of knowledge, experience,  
34 and community values from all sectors of the criminal justice  
35 system, from the public at large, and from other jurisdictions.

36 (5) Perform its work and provide explanations for its actions  
37 consistent with the purposes of the sentencing system as set forth  
38 in subdivision (c) of Section 4951.

1     (6) *Ensure that all these efforts take place on a permanent and*  
2 *ongoing basis, with the expectation that the sentencing system*  
3 *strives continually to evaluate itself, evolve, and improve.*

4     (7) *Create a sentencing structure that is readily understood by*  
5 *the courts, the parties, and the public.*

6     4953. (a) (1) *The commission shall be composed of 13 voting*  
7 *members, one of whom shall be the Secretary of the Department*  
8 *of Corrections and Rehabilitation, or his or her designee. One*  
9 *member shall be the Chief Justice of the California Supreme Court,*  
10 *or his or her designee, who shall chair the commission. One*  
11 *member shall be a sitting or retired appellate court justice*  
12 *appointed by the Chief Justice of the California Supreme Court.*  
13 *One member shall be a sitting or retired trial court judge appointed*  
14 *by the Chief Justice of the California Supreme Court. One member*  
15 *shall be the State Public Defender. The Governor shall appoint*  
16 *eight voting members, subject to confirmation by the Senate: a*  
17 *California district attorney recommended by the California District*  
18 *Attorney Association, a county sheriff recommended by the*  
19 *California State Sheriffs Association, a chief of police*  
20 *recommended by the California Police Chiefs Association, two*  
21 *academic experts in criminal justice policy, a chief probation*  
22 *officer recommended by the Chief Probation Officers of California,*  
23 *a public defender with expertise in inmate or inmate family rights*  
24 *recommended by the California Public Defenders Association,*  
25 *and a legal scholar with expertise in sentencing law. There shall*  
26 *also be three nonvoting members, one ex-felon appointed by the*  
27 *Speaker of the Assembly, one crime victim appointed by the*  
28 *Governor, and one member who shall be either a county mental*  
29 *health director or a substance abuse expert with substantial*  
30 *experience in offender treatment appointed by the Senate*  
31 *Committee on Rules, none of whom shall be subject to confirmation*  
32 *by the Senate.*

33     (b) *On July 1, 2013, the terms of the nonvoting members, the*  
34 *sitting or retired trial court judge, the public defender, the district*  
35 *attorney, the chief of police, and the sheriff shall expire. On July*  
36 *1, 2014, the terms of the probation officer, the sitting or retired*  
37 *appellate court justice, the experts in criminal justice, and the*  
38 *legal scholar shall expire. Successor members shall hold office*  
39 *for terms of three years, each term to commence on the expiration*  
40 *date of the predecessor. Any appointment to a vacancy that occurs*

1 *for any reason other than the expiration of the term shall be for*  
2 *the remainder of the unexpired term. Members are eligible for*  
3 *reappointment.*

4 *(c) The members of the commission shall serve without*  
5 *compensation, but shall be reimbursed for all necessary expenses*  
6 *actually incurred in the performance of their duties.*

7 *(d) The commission shall establish committees as it deems*  
8 *necessary.*

9 *4954. (a) The California Public Safety Commission shall*  
10 *perform the following initial duties:*

11 *(1) No later than June 1, 2012, the commission shall promulgate*  
12 *and present to the Legislature an initial set of sentencing and*  
13 *parole rules pursuant to Section 4955. If the Legislature does not*  
14 *reject the rules presented to it by the commission before January*  
15 *1 of the following year by a statute passed by a majority vote of*  
16 *the Legislature and signed by the Governor, the rules shall become*  
17 *operative on that date.*

18 *(2) No later than July 1, 2013, the commission shall prepare a*  
19 *report to the Legislature and the Governor setting forth*  
20 *recommended statutory changes in statutory provisions added or*  
21 *affected by initiative measures necessary to conform those*  
22 *provisions to the requirements of this article.*

23 *(b) The California Public Safety Commission shall perform the*  
24 *following ongoing duties:*

25 *(1) Promulgate and periodically revise sentencing rules for*  
26 *those crimes and penalties that the Legislature has delegated*  
27 *authority to the commission.*

28 *(2) Promulgate and periodically revise parole rules in those*  
29 *areas for which the Legislature has delegated authority to the*  
30 *commission.*

31 *(3) Make recommendations to the Legislature for additional*  
32 *statutory changes to criminal laws.*

33 *(4) Prepare population projections for the correctional system*  
34 *whenever new sentencing or parole rules, laws, or initiatives*  
35 *affecting criminal law and punishment are proposed.*

36 *(5) Serve as a resource and information center with respect to*  
37 *state and local sentencing policy.*

38 *(6) Develop information systems to track criminal cases entering*  
39 *the court system; the effects of offense, offender, victim, and*  
40 *case-processing characteristics upon sentences imposed and*



1 served; sentencing patterns for the state as a whole and for  
2 geographic regions within the state; data on the incidence of and  
3 reasons for sentence revocations; and other matters found by the  
4 commission to have important bearing on the operation of the  
5 sentencing and corrections system.

6 (7) Collect information on, and, where necessary, conduct  
7 periodic surveys of, the correctional populations and resources  
8 of the state.

9 (8) Assemble information on the effectiveness of sentences  
10 imposed and served in meeting the purposes set forth in Section  
11 4951.

12 (c) Any sentencing or parole rule or rules promulgated by the  
13 commission shall take effect as follows:

14 (1) Rules shall take effect on January 1 of the year immediately  
15 following the year the rules are promulgated if the commission  
16 presents the rules to the Legislature on or before June 1, and the  
17 Legislature does not reject the rules by a statute passed by a  
18 majority vote of each house of the Legislature and signed by the  
19 Governor.

20 (2) Rules shall take effect on January 1 of the year subsequent  
21 to the year following the year the rules are promulgated if the  
22 commission presents the rules to the Legislature after June 1, and  
23 the Legislature does not reject the rules by a statute passed by a  
24 majority vote of each house of the Legislature and signed by the  
25 Governor.

26 (3) Rules rejected by the Legislature pursuant to this subdivision  
27 shall have no effect of law.

28 (d) In discharging its responsibilities under this section the  
29 commission shall do the following:

30 (1) Collect information on all correctional populations in the  
31 state.

32 (2) Survey correctional resources across state and local  
33 governments.

34 (3) Conduct research into crime rates, criminal cases entering  
35 the court system, sentences imposed and served for particular  
36 offenses, and sentencing patterns for the state as a whole and for  
37 geographic regions within the state.

38 (4) Consult available research and data on the current  
39 effectiveness of sentences imposed and served in the jurisdiction  
40 as measured against the purposes set forth in Section 4951.

1     (5) *Study the experiences of other jurisdictions with sentencing*  
2     *commissions.*

3     (6) *Advise the Legislature of any needed reallocations or*  
4     *additions in correctional resources.*

5     (7) *Recommend to the Legislature any statutory changes needed*  
6     *and recommend to the Judicial Council any changes needed in the*  
7     *rules of criminal procedure, to best effectuate the sentencing rules*  
8     *promulgated by the commission.*

9     (8) *Identify and prioritize areas where necessary data and*  
10    *research are lacking concerning the operation of the sentencing*  
11    *system, and recommend to the Legislature means by which the*  
12    *commission or other state agencies may be empowered to address*  
13    *those needs.*

14    (e) *The commission shall take steps to facilitate the*  
15    *implementation of rules promulgated and operational pursuant to*  
16    *this act. In performing this function, the commission may do any*  
17    *or all of the following:*

18    (1) *Develop manuals, forms, and other controls to attain greater*  
19    *consistency in the contents and preparation of presentence reports*  
20    *and sentence reports.*

21    (2) *Provide information to government officials, government*  
22    *agencies, the courts, the bar, and the public on sentencing rules,*  
23    *sentencing policies, sentencing proposals, and sentencing*  
24    *practices.*

25    (3) *Produce as needed, manuals, users' guides, worksheets,*  
26    *summaries of case law, Internet resources, and other materials*  
27    *the commission deems useful to explain and ease the proper*  
28    *application of the rules.*

29    (f) *On or before June 1, 2014, and annually thereafter, the*  
30    *commission shall publish a report to the Legislature and the public*  
31    *on the commission's activities, including data collection and*  
32    *research, reports of any special research undertaken by the*  
33    *commission, and other reports as directed by the Legislature.*

34    (g) *The commission shall not take any position either supporting*  
35    *or opposing any proposed legislation or ballot initiative.*

36    (h) *The commission shall develop a correctional population*  
37    *forecasting model to project future sentencing outcomes under*  
38    *existing or proposed legislation, voter initiatives, court orders,*  
39    *administrative actions, and sentencing and parole rules. The*  
40    *commission shall use the model to project sentencing outcomes*

1 under existing legislation, voter initiatives, court orders,  
2 administrative actions, and sentencing and parole rules. The  
3 commission shall also use the model whenever new legislation or  
4 voter initiatives affecting criminal punishment are introduced or  
5 new or amended sentencing rules are formally promulgated, and  
6 shall generate projections of sentencing outcomes if the proposed  
7 legislation or initiative or sentencing rule were to take effect. The  
8 commission shall make and publish a report to the Legislature  
9 and the public with each set of projections generated under this  
10 subdivision. Projections under this model shall include anticipated  
11 demands upon prisons, jails, and community corrections programs.  
12 Whenever the model projects correctional needs exceeding  
13 available resources at the state or local level, the commission's  
14 report shall include estimates of new facilities, personnel, and  
15 funding that would be required to accommodate those needs. The  
16 model shall be designed to project future demographic patterns  
17 in sentencing. The commission shall refine the model as needed  
18 in light of its past performance and the best available information.

19 (i) The commission shall perform any other functions that may  
20 be required by law or that may be necessary to carry out the  
21 provisions of this section.

22 (j) In the event a court of competent jurisdiction orders a  
23 reduction in the inmate population, the commission shall develop  
24 recommendations on how to best comply with the court's order.  
25 Recommendations developed under this subdivision shall be  
26 promulgated as expeditiously as possible. However, these  
27 recommendations shall not be binding.

28 (k) Nothing in this title limits the authority of the Legislature,  
29 or the people through the initiative process, to enact legislation  
30 that repeals or amends any rule promulgated by the commission  
31 that becomes operative.

32 4955. (a) The commission shall abide by the following  
33 standards in promulgating rules pursuant to Section 4954:

34 (1) The commission shall establish categories of offenses within  
35 the bounds of the authority delegated to it by the Legislature. In  
36 establishing categories of offenses, the commission shall endeavor  
37 to place offenses with similar attributes in the same category.

38 (2) Sentencing rules shall set forth presumptive sentences and  
39 nonexclusive lists of aggravating and mitigating factors that may  
40 be used as grounds for departure from presumptive sentences.

1 *Sentencing rules shall provide that a departure sentence may not*  
2 *be based on any factor necessarily comprehended in the elements*  
3 *of the offenses of which the offender has been convicted, and no*  
4 *finding of fact may be used more than once as a ground for*  
5 *departure.*

6 (3) (A) *Consistent with Section 28 of Article I of the California*  
7 *Constitution, sentencing rules shall reflect the principle that*  
8 *incarceration is appropriate for those who commit a violent offense*  
9 *and offenders who have a record indicating a pattern of regular*  
10 *or increasingly serious criminal conduct.*

11 (B) *The commission shall consider the statutory penalties that*  
12 *existed as of December 31, 2008, prescribed for a similar offender*  
13 *committing a similar offense.*

14 (C) *Presumptive sentences shall be proportionate to the gravity*  
15 *of offenses, the harms done to crime victims, the potential deterrent*  
16 *effect of the penalty, and the blameworthiness of offenders, based*  
17 *upon the commission's collective judgment of appropriate*  
18 *punishments for ordinary cases of the kind governed by each*  
19 *presumptive sentence. Ranges of incarceration terms should be*  
20 *sufficiently narrow to express meaningful distinctions across*  
21 *categories of cases on grounds of proportionality, to promote*  
22 *reasonable uniformity in sentences imposed and served.*

23 (4) *The commission shall determine the best formats for*  
24 *expression of presumptive sentences and other rules, which may*  
25 *include one or more grids, narrative statements, or other means*  
26 *of expression.*

27 (5) *Rules shall be as simple in their presentation and use as is*  
28 *feasible.*

29 (6) *Rules shall include nonbinding commentary to explain the*  
30 *commission's reasoning underlying each rule, and to assist*  
31 *sentencing courts and other actors in the sentencing system in the*  
32 *use of the rules.*

33 (7) *Rules shall address the use of prison, jail, probation,*  
34 *community sanctions, economic sanctions, parole, and other*  
35 *sanction types as found necessary by the commission.*

36 (b) *Except as provided in this article, the commission shall give*  
37 *no weight to the following factors when promulgating sentencing*  
38 *rules:*

39 (1) *An offender's race, ethnicity, sexual orientation, national*  
40 *origin, religion, and political affiliation or belief.*

1     (2) *Alleged criminal conduct on the part of the offender other*  
2 *than the current offenses of conviction and, consistent with this*  
3 *article, prior convictions and juvenile adjudications.*

4     (c) *The commission shall consider the following with respect*  
5 *to the use of criminal history in promulgating sentencing rules:*

6     (1) *The commission shall consider the inclusion of criminal*  
7 *histories of defendants as a factor in the determination of*  
8 *presumptive sentences, as an aggravating factor enumerated as a*  
9 *grounds for departure from a presumptive sentence, or as a*  
10 *component of other presumptive provisions.*

11     (2) *The commission may consider limitations periods after which*  
12 *offenders' prior convictions and juvenile adjudications should not*  
13 *be taken into account to enhance a sentence.*

14     (3) *The commission shall monitor the effects of sentencing rules*  
15 *concerning criminal history, any legislation incorporating*  
16 *offenders' criminal history as a factor relevant to sentencing, and*  
17 *the consideration of criminal history by sentencing courts.*

18     (d) *The Legislature hereby declares that the best effectuation*  
19 *of the purposes of sentencing will often turn upon the circumstances*  
20 *of individual cases. The rules shall permit sentencing courts to*  
21 *individualize sentencing decisions in light of the purposes in*  
22 *Section 4951, and the rules shall not foreclose the individualization*  
23 *of sentences in light of those considerations.*

24     4956. (a) (1) *Upon request from the commission, each agency*  
25 *and department of state government shall make its services,*  
26 *equipment, personnel, facilities, and information available to the*  
27 *greatest practicable extent to the commission in the execution of*  
28 *its functions. Information that is privileged under state or federal*  
29 *law is exempted from this section.*

30     (2) *State agencies shall inform the commission if the information*  
31 *requested is not available. If the commission is informed by a state*  
32 *agency that information is not available, the commission may then*  
33 *request that information from a local law enforcement agency*  
34 *which may provide that information to the greatest extent practical.*

35     (b) *Upon request from the commission, state law enforcement*  
36 *agencies, including parole officers, shall supply arrest and criminal*  
37 *history records to the commission. County probation departments*  
38 *may provide copies of presentence reports to the commission, upon*  
39 *request.*

1 (c) The commission shall make recommendations to the  
2 Legislature regarding additional data or information beyond what  
3 is obtained pursuant to subdivisions (a) and (b) that may be  
4 necessary or would assist in the execution of its functions.

5 (d) Any information obtained by the commission pursuant to  
6 subdivision (a) is confidential, and shall be maintained in a manner  
7 that meets the highest standards of privacy and shall not be  
8 disclosed other than for the purpose for which it was acquired.

9 (e) The commission shall have the authority to enter  
10 partnerships or joint agreements with organizations and agencies  
11 from this and other jurisdictions, including academic departments,  
12 private associations, and other sentencing commissions, to perform  
13 research needed to carry out its duties.

14 4957. Sentencing rules adopted by the commission, which  
15 become operative, shall be used by a sentencing court to determine  
16 the sentence to be imposed as provided in this title. The sentencing  
17 court's determination shall include all of the following:

18 (a) A determination about whether to impose a sentence of  
19 probation, a fine, a term of incarceration, an intermediate sanction,  
20 or some combination thereof.

21 (b) A determination as to the length of a term of probation, if  
22 any.

23 (c) A determination as to the amount of fine, if any.

24 (d) A determination as to the length of incarceration, if any.

25 (e) If the sentence includes a term of incarceration, a  
26 determination as to whether to impose a term of post-release  
27 supervision and the length of the term of post-release supervision,  
28 if any.

29 (f) A determination as to the type and length of intermediate  
30 sanction, if any.

31 (g) A determination whether multiple sentences to terms of  
32 imprisonment should be ordered to run concurrently or  
33 consecutively.

34 (h) Other conditions of sentence, such as community service,  
35 participation in treatment programs, or participation in community  
36 corrections programs, if permitted under the applicable sentencing  
37 rules.

38 4958. If an offense is subject to sentencing rules operative  
39 pursuant to this title, the following shall apply:

1     (a) Sentences for that offense shall be imposed in accordance  
2     with the sentencing rules of the commission.

3     (b) Sentencing rules shall prevail over Sections 1170, 1170.1,  
4     and 1170.11.

5     (c) Any statutory enhancement for which an additional or  
6     different term of imprisonment is authorized shall apply unless  
7     that provision has been made subordinate to this title.

8     (d) Nothing in this title shall preclude the application of terms  
9     of imprisonment established by any statutory provisions added or  
10    amended by initiative acts.

11    (e) A defendant shall be sentenced in accordance with the  
12    sentencing rules in effect on the date the charged offense was  
13    committed.

14    4959. (a) The commission shall appoint an executive director  
15    who shall be exempt from civil service.

16    (b) The administrative duties of the commission shall be  
17    conducted by commission staff physically sited in the  
18    Administrative Office of the Courts (AOC). All its decisions,  
19    analyses, recommendations, and other duties shall be independent  
20    of the AOC and shall not reflect any position of the AOC or be  
21    represented as those of the AOC.

22    (c) For the purposes of expenditures for the support of the  
23    commission, including the expenses of the members of the  
24    commission, the commission shall be deemed to be within the  
25    judicial branch of state government, but the commission shall not  
26    be subject to the control or direction of any officer or employee  
27    of the judicial branch except in connection with the appropriation  
28    of funds approved by the Legislature.

29    (d) The commission is a criminal justice agency within the  
30    meaning of Section 13101.

31    (e) The commission's proceedings shall be subject to the open  
32    meeting requirements of the Bagley-Keene Open Meeting Act  
33    (Article 9 (commencing with Section 11120) of Chapter 1 of Part  
34    1 of Division 3 of Title 2 of the Government Code).

35    4960. (a) The commission may adopt rules and regulations to  
36    implement this title.

37    (b) (1) All sentencing rules shall be adopted by a majority vote  
38    of the commission.

(2) *Sentencing rules are not subject to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code).*

SEC. 322. *Section 12022 of the Penal Code is amended to read:*

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless the arming is an element of that offense. This additional term shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, or a .50 BMG rifle, as defined in Section 12278, the additional and consecutive term described in this subdivision shall be three years whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon or machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon or machinegun, or a .50 BMG rifle.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.



(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall be punished by an additional and consecutive term of imprisonment in the state prison for three, four, or five years.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment in the state prison for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

(g) *Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

SEC. 323. *Section 12022.1 of the Penal Code is amended to read:*

12022.1. (a) For the purposes of this section only:

(1) “Primary offense” means a felony offense for which a person has been released from custody on bail or on his or her own recognizance prior to the judgment becoming final, including the disposition of any appeal, or for which release on bail or his or her own recognizance has been revoked. In cases where the court has granted a stay of execution of a county jail commitment or state prison commitment, “primary offense” also means a felony offense for which a person is out of custody during the period of time between the pronouncement of judgment and the time the person actually surrenders into custody or is otherwise returned to custody.

1 (2) “Secondary offense” means a felony offense alleged to have  
2 been committed while the person is released from custody for a  
3 primary offense.

4 (b) Any person arrested for a secondary offense which was  
5 alleged to have been committed while that person was released  
6 from custody on a primary offense shall be subject to a penalty  
7 enhancement of an additional two years in state prison which shall  
8 be served consecutive to any other term imposed by the court.

9 (c) The enhancement allegation provided in subdivision (b)  
10 shall be pleaded in the information or indictment which alleges  
11 the secondary offense, or in the information or indictment of the  
12 primary offense if a conviction has already occurred in the  
13 secondary offense, and shall be proved as provided by law. The  
14 enhancement allegation may be pleaded in a complaint but need  
15 not be proved at the preliminary hearing or grand jury hearing.

16 (d) Whenever there is a conviction for the secondary offense  
17 and the enhancement is proved, and the person is sentenced on the  
18 secondary offense prior to the conviction of the primary offense,  
19 the imposition of the enhancement shall be stayed pending  
20 imposition of the sentence for the primary offense. The stay shall  
21 be lifted by the court hearing the primary offense at the time of  
22 sentencing for that offense and shall be recorded in the abstract of  
23 judgment. If the person is acquitted of the primary offense the stay  
24 shall be permanent.

25 (e) If the person is convicted of a felony for the primary offense,  
26 is sentenced to state prison for the primary offense, and is convicted  
27 of a felony for the secondary offense, any state prison sentence  
28 for the secondary offense shall be consecutive to the primary  
29 sentence.

30 (f) If the person is convicted of a felony for the primary offense,  
31 is granted probation for the primary offense, and is convicted of  
32 a felony for the secondary offense, any state prison sentence for  
33 the secondary offense shall be enhanced as provided in subdivision  
34 (b).

35 (g) If the primary offense conviction is reversed on appeal, the  
36 enhancement shall be suspended pending retrial of that felony.  
37 Upon retrial and reconviction, the enhancement shall be reimposed.  
38 If the person is no longer in custody for the secondary offense  
39 upon reconviction of the primary offense, the court may, at its

1 discretion, reimpose the enhancement and order him or her  
2 recommitted to custody.

3 *(h) Alternatively, on or after the operative date of an applicable*  
4 *rule or rules proposed by the California Public Safety Commission,*  
5 *a person who violates this section shall be punished as provided*  
6 *in the applicable sentencing rules.*

7 *SEC. 324. Section 12022.2 of the Penal Code is amended to*  
8 *read:*

9 12022.2. (a) Any person who, while armed with a firearm in  
10 the commission or attempted commission of any felony, has in his  
11 or her immediate possession ammunition for the firearm designed  
12 primarily to penetrate metal or armor, shall upon conviction of  
13 that felony or attempted felony, in addition and consecutive to the  
14 punishment prescribed for the felony or attempted felony, be  
15 punished by an additional term of 3, 4, or 10 years. The court shall  
16 order the middle term unless there are circumstances in aggravation  
17 or mitigation. The court shall state the reasons for its enhancement  
18 choice on the record at the time of the sentence.

19 (b) Any person who wears a body vest in the commission or  
20 attempted commission of a violent offense, as defined in  
21 subdivision (b) of Section 12021.1, shall, upon conviction of that  
22 felony or attempted felony, in addition and consecutive to the  
23 punishment prescribed for the felony or attempted felony of which  
24 he or she has been convicted, be punished by an additional term  
25 of one, two, or five years. The court shall order the middle term  
26 unless there are circumstances in aggravation or mitigation. The  
27 court shall state the reasons for its enhancement choice on the  
28 record at the time of the sentence.

29 *(c) Alternatively, on or after the operative date of an applicable*  
30 *rule or rules proposed by the California Public Safety Commission,*  
31 *a person who violates this section shall be punished as provided*  
32 *in the applicable sentencing rules.*

33 ~~(e)~~

34 (d) As used in this section, “body vest” means any  
35 bullet-resistant material intended to provide ballistic and trauma  
36 protection for the wearer.

37 *SEC. 325. Section 12022.3 of the Penal Code is amended to*  
38 *read:*

39 12022.3. For each violation of Section 220 involving a specified  
40 sexual offense, or for each violation or attempted violation of

1 Section 261, 262, 264.1, 286, 288, 288a, or 289, and in addition  
2 to the sentence provided, any person shall receive the following:

3 (a) A 3-, 4-, or 10-year enhancement if the person uses a firearm  
4 or a deadly weapon in the commission of the violation.

5 (b) A one-, two-, or five-year enhancement if the person is armed  
6 with a firearm or a deadly weapon.

7 (c) *Alternatively, on or after the operative date of an applicable*  
8 *rule or rules proposed by the California Public Safety Commission,*  
9 *a person who violates this section shall be punished as provided*  
10 *in the applicable sentencing rules.*

11 SEC. 326. *Section 12022.4 of the Penal Code is amended to*  
12 *read:*

13 12022.4. (a) Any person who, during the commission or  
14 attempted commission of a felony, furnishes or offers to furnish  
15 a firearm to another for the purpose of aiding, abetting, or enabling  
16 that person or any other person to commit a felony shall, in addition  
17 and consecutive to the punishment prescribed by the felony or  
18 attempted felony of which the person has been convicted, be  
19 punished by an additional term of one, two, or three years in the  
20 state prison. The court shall order the middle term unless there are  
21 circumstances in aggravation or mitigation. The court shall state  
22 the reasons for its enhancement choice on the record at the time  
23 of the sentence. The additional term provided in this section shall  
24 not be imposed unless the fact of the furnishing is charged in the  
25 accusatory pleading and admitted or found to be true by the trier  
26 of fact.

27 (b) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 SEC. 327. *Section 12022.5 of the Penal Code is amended to*  
32 *read:*

33 12022.5. (a) Except as provided in subdivision (b), any person  
34 who personally uses a firearm in the commission of a felony or  
35 attempted felony shall be punished by an additional and  
36 consecutive term of imprisonment in the state prison for 3, 4, or  
37 10 years, unless use of a firearm is an element of that offense.

38 (b) Notwithstanding subdivision (a), any person who personally  
39 uses an assault weapon, as specified in Section 12276 or Section  
40 12276.1, or a machinegun, as defined in Section 12200, in the

1 commission of a felony or attempted felony, shall be punished by  
2 an additional and consecutive term of imprisonment in the state  
3 prison for 5, 6, or 10 years.

4 (c) Notwithstanding Section 1385 or any other provisions of  
5 law, the court shall not strike an allegation under this section or a  
6 finding bringing a person within the provisions of this section.

7 (d) Notwithstanding the limitation in subdivision (a) relating to  
8 being an element of the offense, the additional term provided by  
9 this section shall be imposed for any violation of Section 245 if a  
10 firearm is used, or for murder if the killing is perpetrated by means  
11 of shooting a firearm from a motor vehicle, intentionally at another  
12 person outside of the vehicle with the intent to inflict great bodily  
13 injury or death.

14 (e) When a person is found to have personally used a firearm,  
15 an assault weapon, a machinegun, or a .50 BMG rifle, in the  
16 commission of a felony or attempted felony as provided in this  
17 section and the firearm, assault weapon, machinegun, or a .50  
18 BMG rifle, is owned by that person, the court shall order that the  
19 firearm be deemed a nuisance and disposed of in the manner  
20 provided in Section 12028.

21 (f) For purposes of imposing an enhancement under Section  
22 1170.1, the enhancements under this section shall count as one,  
23 single enhancement.

24 (g) *Alternatively, on or after the operative date of an applicable*  
25 *rule or rules proposed by the California Public Safety Commission,*  
26 *a person who violates this section shall be punished as provided*  
27 *in the applicable sentencing rules.*

28 SEC. 328. *Section 12022.53 of the Penal Code is amended to*  
29 *read:*

30 12022.53. (a) This section applies to the following felonies:

31 (1) Section 187 (murder).

32 (2) Section 203 or 205 (mayhem).

33 (3) Section 207, 209, or 209.5 (kidnapping).

34 (4) Section 211 (robbery).

35 (5) Section 215 (carjacking).

36 (6) Section 220 (assault with intent to commit a specified  
37 felony).

38 (7) Subdivision (d) of Section 245 (assault with a firearm on a  
39 peace officer or firefighter).

40 (8) Section 261 or 262 (rape).

1 (9) Section 264.1 (rape or sexual penetration in concert).

2 (10) Section 286 (sodomy).

3 (11) Section 288 or 288.5 (lewd act on a child).

4 (12) Section 288a (oral copulation).

5 (13) Section 289 (sexual penetration).

6 (14) Section 4500 (assault by a life prisoner).

7 (15) Section 4501 (assault by a prisoner).

8 (16) Section 4503 (holding a hostage by a prisoner).

9 (17) Any felony punishable by death or imprisonment in the  
10 state prison for life.

11 (18) Any attempt to commit a crime listed in this subdivision  
12 other than an assault.

13 (b) Notwithstanding any other provision of law, any person  
14 who, in the commission of a felony specified in subdivision (a),  
15 personally uses a firearm, shall be punished by an additional and  
16 consecutive term of imprisonment in the state prison for 10 years.  
17 The firearm need not be operable or loaded for this enhancement  
18 to apply.

19 (c) Notwithstanding any other provision of law, any person  
20 who, in the commission of a felony specified in subdivision (a),  
21 personally and intentionally discharges a firearm, shall be punished  
22 by an additional and consecutive term of imprisonment in the state  
23 prison for 20 years.

24 (d) Notwithstanding any other provision of law, any person  
25 who, in the commission of a felony specified in subdivision (a),  
26 Section 246, or subdivision (c) or (d) of Section 12034, personally  
27 and intentionally discharges a firearm and proximately causes great  
28 bodily injury, as defined in Section 12022.7, or death, to any person  
29 other than an accomplice, shall be punished by an additional and  
30 consecutive term of imprisonment in the state prison for 25 years  
31 to life.

32 (e) (1) The enhancements provided in this section shall apply  
33 to any person who is a principal in the commission of an offense  
34 if both of the following are pled and proved:

35 (A) The person violated subdivision (b) of Section 186.22.

36 (B) Any principal in the offense committed any act specified  
37 in subdivision (b), (c), or (d).

38 (2) An enhancement for participation in a criminal street gang  
39 pursuant to Chapter 11 (commencing with Section 186.20) of Title  
40 7 of Part 1 shall not be imposed on a person in addition to an

1 enhancement imposed pursuant to this subdivision, unless the  
2 person personally used or personally discharged a firearm in the  
3 commission of the offense.

4 (f) Only one additional term of imprisonment under this section  
5 shall be imposed per person for each crime. If more than one  
6 enhancement per person is found true under this section, the court  
7 shall impose upon that person the enhancement that provides the  
8 longest term of imprisonment. An enhancement involving a firearm  
9 specified in Section 12021.5, 12022, 12022.3, 12022.4, 12022.5,  
10 or 12022.55 shall not be imposed on a person in addition to an  
11 enhancement imposed pursuant to this section. An enhancement  
12 for great bodily injury as defined in Section 12022.7, 12022.8, or  
13 12022.9 shall not be imposed on a person in addition to an  
14 enhancement imposed pursuant to subdivision (d).

15 (g) Notwithstanding any other provision of law, probation shall  
16 not be granted to, nor shall the execution or imposition of sentence  
17 be suspended for, any person found to come within the provisions  
18 of this section.

19 (h) Notwithstanding Section 1385 or any other provision of law,  
20 the court shall not strike an allegation under this section or a finding  
21 bringing a person within the provisions of this section.

22 (i) The total amount of credits awarded pursuant to Article 2.5  
23 (commencing with Section 2930) of Chapter 7 of Title 1 of Part  
24 3 or pursuant to Section 4019 or any other provision of law shall  
25 not exceed 15 percent of the total term of imprisonment imposed  
26 on a defendant upon whom a sentence is imposed pursuant to this  
27 section.

28 (j) For the penalties in this section to apply, the existence of any  
29 fact required under subdivision (b), (c), or (d) shall be alleged in  
30 the accusatory pleading and either admitted by the defendant in  
31 open court or found to be true by the trier of fact. When an  
32 enhancement specified in this section has been admitted or found  
33 to be true, the court shall impose punishment for that enhancement  
34 pursuant to this section rather than imposing punishment authorized  
35 under any other provision of law, unless another enhancement  
36 provides for a greater penalty or a longer term of imprisonment.

37 (k) When a person is found to have used or discharged a firearm  
38 in the commission of an offense that includes an allegation pursuant  
39 to this section and the firearm is owned by that person, a  
40 coparticipant, or a coconspirator, the court shall order that the

1 firearm be deemed a nuisance and disposed of in the manner  
2 provided in Section 12028.

3 (l) The enhancements specified in this section shall not apply  
4 to the lawful use or discharge of a firearm by a public officer, as  
5 provided in Section 196, or by any person in lawful self-defense,  
6 lawful defense of another, or lawful defense of property, as  
7 provided in Sections 197, 198, and 198.5.

8 (m) *Alternatively, on or after the operative date of an applicable*  
9 *rule or rules proposed by the California Public Safety Commission,*  
10 *a person who violates this section shall be punished as provided*  
11 *in the applicable sentencing rules.*

12 SEC. 329. *Section 12022.55 of the Penal Code is amended to*  
13 *read:*

14 12022.55. (a) Notwithstanding Section 12022.5, any person  
15 who, with the intent to inflict great bodily injury or death, inflicts  
16 great bodily injury, as defined in Section 12022.7, or causes the  
17 death of a person, other than an occupant of a motor vehicle, as a  
18 result of discharging a firearm from a motor vehicle in the  
19 commission of a felony or attempted felony, shall be punished by  
20 an additional and consecutive term of imprisonment in the state  
21 prison for 5, 6, or 10 years.

22 (b) *Alternatively, on or after the operative date of an applicable*  
23 *rule or rules proposed by the California Public Safety Commission,*  
24 *a person who violates this section shall be punished as provided*  
25 *in the applicable sentencing rules.*

26 SEC. 330. *Section 12022.6 of the Penal Code is amended to*  
27 *read:*

28 12022.6. (a) When any person takes, damages, or destroys  
29 any property in the commission or attempted commission of a  
30 felony, with the intent to cause that taking, damage, or destruction,  
31 the court shall impose an additional term as follows:

32 (1) If the loss exceeds sixty-five thousand dollars (\$65,000),  
33 the court, in addition and consecutive to the punishment prescribed  
34 for the felony or attempted felony of which the defendant has been  
35 convicted, shall impose an additional term of one year.

36 (2) If the loss exceeds two hundred thousand dollars (\$200,000),  
37 the court, in addition and consecutive to the punishment prescribed  
38 for the felony or attempted felony of which the defendant has been  
39 convicted, shall impose an additional term of two years.



(3) If the loss exceeds one million three hundred thousand dollars (\$1,300,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of three years.

(4) If the loss exceeds three million two hundred thousand dollars (\$3,200,000), the court, in addition and consecutive to the punishment prescribed for the felony or attempted felony of which the defendant has been convicted, shall impose an additional term of four years.

(b) In any accusatory pleading involving multiple charges of taking, damage, or destruction, the additional terms provided in this section may be imposed if the aggregate losses to the victims from all felonies exceed the amounts specified in this section and arise from a common scheme or plan. All pleadings under this section shall remain subject to the rules of joinder and severance stated in Section 954.

(c) The additional terms provided in this section shall not be imposed unless the facts of the taking, damage, or destruction in excess of the amounts provided in this section are charged in the accusatory pleading and admitted or found to be true by the trier of fact.

(d) This section applies to, but is not limited to, property taken, damaged, or destroyed in violation of Section 502 or subdivision (b) of Section 502.7. This section shall also apply to applicable prosecutions for a violation of Section 350, 653h, 653s, or 653w.

*(e) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~

(f) For the purposes of this section, the term “loss” has the following meanings:

(1) When counterfeit items of computer software are manufactured or possessed for sale, the “loss” from the counterfeiting of those items shall be equivalent to the retail price or fair market value of the true items that are counterfeited.

(2) When counterfeited but unassembled components of computer software packages are recovered, including, but not limited to, counterfeited computer diskettes, instruction manuals,

1 or licensing envelopes, the “loss” from the counterfeiting of those  
2 components of computer software packages shall be equivalent to  
3 the retail price or fair market value of the number of completed  
4 computer software packages that could have been made from those  
5 components.

6 ~~(f)~~

7 (g) It is the intent of the Legislature that the provisions of this  
8 section be reviewed within 10 years to consider the effects of  
9 inflation on the additional terms imposed. For that reason this  
10 section shall remain in effect only until January 1, 2018, and as of  
11 that date is repealed unless a later enacted statute, which is enacted  
12 before January 1, 2018, deletes or extends that date.

13 *SEC. 331. Section 12022.7 of the Penal Code is amended to*  
14 *read:*

15 12022.7. (a) Any person who personally inflicts great bodily  
16 injury on any person other than an accomplice in the commission  
17 of a felony or attempted felony shall be punished by an additional  
18 and consecutive term of imprisonment in the state prison for three  
19 years.

20 (b) Any person who personally inflicts great bodily injury on  
21 any person other than an accomplice in the commission of a felony  
22 or attempted felony which causes the victim to become comatose  
23 due to brain injury or to suffer paralysis of a permanent nature,  
24 shall be punished by an additional and consecutive term of  
25 imprisonment in the state prison for five years. As used in this  
26 subdivision, “paralysis” means a major or complete loss of motor  
27 function resulting from injury to the nervous system or to a  
28 muscular mechanism.

29 (c) Any person who personally inflicts great bodily injury on a  
30 person who is 70 years of age or older, other than an accomplice,  
31 in the commission of a felony or attempted felony shall be punished  
32 by an additional and consecutive term of imprisonment in the state  
33 prison for five years.

34 (d) Any person who personally inflicts great bodily injury on a  
35 child under the age of five years in the commission of a felony or  
36 attempted felony shall be punished by an additional and  
37 consecutive term of imprisonment in the state prison for four, five,  
38 or six years.

39 (e) Any person who personally inflicts great bodily injury under  
40 circumstances involving domestic violence in the commission of

1 a felony or attempted felony shall be punished by an additional  
2 and consecutive term of imprisonment in the state prison for three,  
3 four, or five years. As used in this subdivision, “domestic violence”  
4 has the meaning provided in subdivision (b) of Section 13700.

5 (f) As used in this section, “great bodily injury” means a  
6 significant or substantial physical injury.

7 (g) This section shall not apply to murder or manslaughter or a  
8 violation of Section 451 or 452. Subdivisions (a), (b), (c), and (d)  
9 shall not apply if infliction of great bodily injury is an element of  
10 the offense.

11 (h) The court shall impose the additional terms of imprisonment  
12 under either subdivision (a), (b), (c), or (d), but may not impose  
13 more than one of those terms for the same offense.

14 (i) *Alternatively, on or after the operative date of an applicable*  
15 *rule or rules proposed by the California Public Safety Commission,*  
16 *a person who violates this section shall be punished as provided*  
17 *in the applicable sentencing rules.*

18 SEC. 332. *Section 12022.75 of the Penal Code is amended to*  
19 *read:*

20 12022.75. (a) Except as provided in subdivision (b), any person  
21 who, for the purpose of committing a felony, administers by  
22 injection, inhalation, ingestion, or any other means, any controlled  
23 substance listed in Section 11054, 11055, 11056, 11057, or 11058  
24 of the Health and Safety Code, against the victim’s will by means  
25 of force, violence, or fear of immediate and unlawful bodily injury  
26 to the victim or another person, shall, in addition and consecutive  
27 to the penalty provided for the felony or attempted felony of which  
28 he or she has been convicted, be punished by an additional term  
29 of three years.

30 (b) (1) Any person who, in the commission or attempted  
31 commission of any offense specified in paragraph (2), administers  
32 any controlled substance listed in Section 11054, 11055, 11056,  
33 11057, or 11058 of the Health and Safety Code to the victim shall  
34 be punished by an additional and consecutive term of imprisonment  
35 in the state prison for five years.

36 (2) This subdivision shall apply to the following offenses:

37 (A) Rape, in violation of paragraph (3) or (4) of subdivision (a)  
38 of Section 261.

39 (B) Sodomy, in violation of subdivision (f) or (i) of Section  
40 286.

1 (C) Oral copulation, in violation of subdivision (f) or (i) of  
2 Section 288a.

3 (D) Sexual penetration, in violation of subdivision (d) or (e) of  
4 Section 289.

5 (E) Any offense specified in subdivision (c) of Section 667.61.

6 *(c) Alternatively, on or after the operative date of an applicable*  
7 *rule or rules proposed by the California Public Safety Commission,*  
8 *a person who violates this section shall be punished as provided*  
9 *in the applicable sentencing rules, except that no sentencing rule*  
10 *shall change any provision of this section that was specifically*  
11 *added by voter initiative.*

12 SEC. 333. Section 12022.8 of the Penal Code is amended to  
13 read:

14 12022.8. (a) Any person who inflicts great bodily injury, as  
15 defined in Section 12022.7, on any victim in a violation of Section  
16 220 involving a specified sexual offense, or a violation or attempted  
17 violation of paragraph (2), (3), or (6) of subdivision (a) of Section  
18 261, paragraph (1) or (4) of subdivision (a) of Section 262, Section  
19 264.1, subdivision (b) of Section 288, subdivision (a) of Section  
20 289, or sodomy or oral copulation by force, violence, duress,  
21 menace, or fear of immediate and unlawful bodily injury on the  
22 victim or another person as provided in Section 286 or 288a shall  
23 receive a five-year enhancement for each violation in addition to  
24 the sentence provided for the felony conviction.

25 *(b) Alternatively, on or after the operative date of an applicable*  
26 *rule or rules proposed by the California Public Safety Commission,*  
27 *a person who violates this section shall be punished as provided*  
28 *in the applicable sentencing rules.*

29 SEC. 334. Section 12022.85 of the Penal Code is amended to  
30 read:

31 12022.85. (a) Any person who violates one or more of the  
32 offenses listed in subdivision (b) with knowledge that he or she  
33 has acquired immune deficiency syndrome (AIDS) or with the  
34 knowledge that he or she carries antibodies of the human  
35 immunodeficiency virus at the time of the commission of those  
36 offenses, shall receive a three-year enhancement for each violation  
37 in addition to the sentence provided under those sections.

38 (b) Subdivision (a) applies to the following crimes:

39 (1) Rape in violation of Section 261.

(2) Unlawful intercourse with a person under 18 years of age in violation of Section 261.5.

(3) Rape of a spouse in violation of Section 262.

(4) Sodomy in violation of Section 286.

(5) Oral copulation in violation of Section 288a.

*(c) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~(e)~~

*(d)* For purposes of proving the knowledge requirement of this section, the prosecuting attorney may use test results received under subdivision (c) of Section 1202.1 or subdivision (g) of Section 1202.6.

*SEC. 335. Section 12022.9 of the Penal Code is amended to read:*

12022.9. *(a)* Any person who, during the commission of a felony or attempted felony, knows or reasonably should know that the victim is pregnant, and who, with intent to inflict injury, and without the consent of the woman, personally inflicts injury upon a pregnant woman that results in the termination of the pregnancy shall be punished by an additional and consecutive term of imprisonment in the state prison for five years. The additional term provided in this subdivision shall not be imposed unless the fact of that injury is charged in the accusatory pleading and admitted or found to be true by the trier of fact.

*(b) Alternatively, on or after the operative date of an applicable rule or rules proposed by the California Public Safety Commission, a person who violates this section shall be punished as provided in the applicable sentencing rules.*

~~Nothing~~

*(c) Nothing* in this section shall be construed as affecting the applicability of subdivision (a) of Section 187.

*SEC. 336. Section 12022.95 of the Penal Code is amended to read:*

12022.95. *(a)* Any person convicted of a violation of Section 273a, who under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or injury that results in death, or having the care or custody of any child,

1 under circumstances likely to produce great bodily harm or death,  
2 willfully causes or permits that child to be injured or harmed, and  
3 that injury or harm results in death, shall receive a four-year  
4 enhancement for each violation, in addition to the sentence  
5 provided for that conviction. Nothing in this paragraph shall be  
6 construed as affecting the applicability of subdivision (a) of Section  
7 187 or Section 192. This section shall not apply unless the  
8 allegation is included within an accusatory pleading and admitted  
9 by the defendant or found to be true by the trier of fact.

10 *(b) Alternatively, on or after the operative date of an applicable*  
11 *rule or rules proposed by the California Public Safety Commission,*  
12 *a person who violates this section shall be punished as provided*  
13 *in the applicable sentencing rules.*

14 *SEC. 337. Section 14591 of the Public Resources Code is*  
15 *amended to read:*

16 14591. (a) Except as provided in subdivision (b), in addition  
17 to any other applicable civil or criminal penalties, any person  
18 convicted of a violation of this division is guilty of an infraction,  
19 which is punishable by a fine of one hundred dollars (\$100) for  
20 each initial separate violation and not more than one thousand  
21 dollars (\$1,000) for each subsequent separate violation per day.

22 (b) (1) Every person who, with intent to defraud, takes any of  
23 the following actions is guilty of fraud:

24 (A) Submits a false or fraudulent claim for payment pursuant  
25 to Section 14573 or 14573.5.

26 (B) Fails to accurately report the number of beverage containers  
27 sold, as required by subdivision (b) of Section 14550.

28 (C) Fails to make payments as required by Section 14574.

29 (D) Redeems out-of-state containers, rejected containers, line  
30 breakage, or containers that have already been redeemed.

31 (E) Returns redeemed containers to the marketplace for  
32 ~~redemption~~ redemption.

33 (F) Brings out-of-state containers, rejected containers, or line  
34 breakage to the marketplace for redemption.

35 (G) Submits a false or fraudulent claim for handling fee  
36 payments pursuant to Section 14585.

37 (2) If the money obtained or withheld pursuant to paragraph (1)  
38 exceeds ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars*  
39 *(\$950)*, the fraud is punishable by imprisonment in the county jail  
40 for not more than one year or by a fine not exceeding ten thousand

1 dollars (\$10,000), or by both, or by imprisonment in the state prison  
2 for 16 months, two years, or three years, or by a fine not exceeding  
3 twenty-five thousand dollars (\$25,000) or twice the late or unpaid  
4 payments plus interest, whichever is greater, or by both fine and  
5 imprisonment. If the money obtained or withheld pursuant to  
6 paragraph (1) equals, or is less than, ~~four hundred dollars (\$400)~~  
7 *nine hundred fifty dollars (\$950)*, the fraud is punishable by  
8 imprisonment in the county jail for not more than six months or  
9 by a fine not exceeding one thousand dollars (\$1,000), or by both.

10 (c) For purposes of this section and Chapter 8.5 (commencing  
11 with Section 14595), “line breakage” and “rejected container”  
12 have the same meanings as defined in the regulations adopted or  
13 amended by the department pursuant to this division.

14 *SEC. 338. Section 41955 of the Public Resources Code is*  
15 *amended to read:*

16 41955. If the value of the stolen material is more than fifty  
17 dollars (\$50), but less than ~~four hundred dollars (\$400)~~ *nine*  
18 *hundred fifty dollars (\$950)*, a violation of this part may be charged  
19 as either a misdemeanor or an infraction. A violation after a second  
20 conviction within a 12-month period shall be charged as a  
21 misdemeanor punishable pursuant to Section 19 of the Penal Code.

22 *SEC. 339. Section 19706 of the Revenue and Taxation Code*  
23 *is amended to read:*

24 19706. (a) Any person or any officer or employee of any  
25 corporation who, within the time required by or under the  
26 provisions of this part, willfully fails to file any return or to supply  
27 any information with intent to evade any tax imposed by Part 10  
28 (commencing with Section 17001) or Part 11 (commencing with  
29 Section 23001), or who, willfully and with like intent, makes,  
30 renders, signs, or verifies any false or fraudulent return or statement  
31 or supplies any false or fraudulent information, is punishable by  
32 imprisonment in ~~the~~ a county jail not to exceed one year, or in the  
33 state prison, or by fine of not more than twenty thousand dollars  
34 (\$20,000), or by both ~~the~~ *that* fine and imprisonment, at the  
35 discretion of the court, together with the costs of investigation and  
36 prosecution.

37 (b) *Alternatively, on or after the operative date of an applicable*  
38 *rule or rules proposed by the California Public Safety Commission,*  
39 *a person who violates this section shall be punished as provided*  
40 *in the applicable sentencing rules.*

1     *SEC. 340. Section 4463 of the Vehicle Code is amended to*  
2     *read:*

3     4463. (a) A person who, with intent to prejudice, damage, or  
4     defraud, commits any of the following acts is guilty of a felony  
5     and upon conviction thereof shall be punished by imprisonment  
6     in the state prison for 16 months or two or three years, or by  
7     imprisonment in a county jail for not more than one year:

8     (1) Alters, forges, counterfeits, or falsifies a certificate of  
9     ownership, registration card, certificate, license, license plate,  
10    device issued pursuant to Section 4853, special plate, or permit  
11    provided for by this code or a comparable certificate of ownership,  
12    registration card, certificate, license, license plate, device  
13    comparable to that issued pursuant to Section 4853, special plate,  
14    or permit provided for by any foreign jurisdiction, or alters, forges,  
15    counterfeits, or falsifies the document, device, or plate with intent  
16    to represent it as issued by the department, or alters, forges,  
17    counterfeits, or falsifies with fraudulent intent an endorsement of  
18    transfer on a certificate of ownership or other document evidencing  
19    ownership, or with fraudulent intent displays or causes or permits  
20    to be displayed or have in his or her possession a blank, incomplete,  
21    canceled, suspended, revoked, altered, forged, counterfeit, or false  
22    certificate of ownership, registration card, certificate, license,  
23    license plate, device issued pursuant to Section 4853, special plate,  
24    or permit.

25    (2) Utters, publishes, passes, or attempts to pass, as true and  
26    genuine, a false, altered, forged, or counterfeited matter listed in  
27    paragraph (1) knowing it to be false, altered, forged, or  
28    counterfeited.

29    (b) A person who, with intent to prejudice, damage, or defraud,  
30    commits any of the following acts is guilty of a misdemeanor, and  
31    upon conviction thereof shall be punished by imprisonment in a  
32    county jail for six months or by a fine of not less than five hundred  
33    dollars (\$500) or more than one thousand dollars (\$1,000), or by  
34    both that fine and imprisonment, which penalty shall not be  
35    suspended:

36    (1) Forges, counterfeits, or falsifies a disabled person placard  
37    or a comparable placard relating to parking privileges for disabled  
38    persons provided for by a foreign jurisdiction, or forges,  
39    counterfeits, or falsifies a disabled person placard with intent to  
40    represent it as issued by the department.



1 (2) Passes, or attempts to pass, as true and genuine, a false,  
2 forged, or counterfeit disabled person placard knowing it to be  
3 false, forged, or counterfeited.

4 (3) Acquires, possesses, sells, or offers for sale a genuine or  
5 counterfeit disabled person placard.

6 (c) A person who, with fraudulent intent, displays or causes or  
7 permits to be displayed any forged, counterfeit, or false disabled  
8 person placard, is guilty of a misdemeanor, and upon conviction  
9 thereof shall be punished by imprisonment in a county jail for six  
10 months or by a fine of not less than five hundred dollars (\$500) or  
11 more than one thousand dollars (\$1,000), or by both that fine and  
12 imprisonment, which penalty shall not be suspended.

13 (d) For purposes of subdivision (b) or (c), “disabled person  
14 placard” means a placard issued pursuant to Section 22511.55 or  
15 22511.59.

16 (e) A person who, with intent to prejudice, damage, or defraud,  
17 commits any of the following acts is guilty of an infraction, and  
18 upon conviction thereof shall be punished by a fine of not less than  
19 one hundred dollars (\$100) or more than two hundred fifty dollars  
20 (\$250) for a first offense, not less than two hundred fifty dollars  
21 (\$250) or more than five hundred dollars (\$500) for a second  
22 offense, and not less than five hundred dollars (\$500) or more than  
23 one thousand dollars (\$1,000) for a third or subsequent offense,  
24 which penalty shall not be suspended:

25 (1) Forges, counterfeits, or falsifies a Clean Air Sticker or a  
26 comparable clean air sticker relating to high occupancy vehicle  
27 lane privileges provided for by any foreign jurisdiction, or forges,  
28 counterfeits, or falsifies a Clean Air Sticker with intent to represent  
29 it as issued by the department.

30 (2) Passes, or attempts to pass, as true and genuine, a false,  
31 forged, or counterfeit Clean Air Sticker knowing it to be false,  
32 forged, or counterfeited.

33 (3) Acquires, possesses, sells, or offers for sale a counterfeit  
34 Clean Air Sticker.

35 (4) Acquires, possesses, sells, or offers for sale a genuine Clean  
36 Air Sticker separate from the vehicle for which the department  
37 issued that sticker.

38 (f) As used in this section, “Clean Air Sticker” means a label  
39 or decal issued pursuant to Sections 5205.5 and 21655.9.

1     (g) *Alternatively, on or after the operative date of an applicable*  
2 *rule or rules proposed by the California Public Safety Commission,*  
3 *a person who violates this section shall be punished as provided*  
4 *in the applicable sentencing rules.*

5     SEC. 341. *Section 10801 of the Vehicle Code is amended to*  
6 *read:*

7     10801. (a) Any person who knowingly and intentionally owns  
8 or operates a chop shop is guilty of a public offense and, upon  
9 conviction, shall be punished by imprisonment in the state prison  
10 for two, three, or four years, or by a fine of not more than fifty  
11 thousand dollars (\$50,000), or by both the fine and imprisonment,  
12 or by up to one year in the county jail, or by a fine of not more  
13 than one thousand dollars (\$1,000), or by both the fine and  
14 imprisonment.

15     (b) *Alternatively, on or after the operative date of an applicable*  
16 *rule or rules proposed by the California Public Safety Commission,*  
17 *a person who violates this section shall be punished as provided*  
18 *in the applicable sentencing rules.*

19     SEC. 342. *Section 10802 of the Vehicle Code is amended to*  
20 *read:*

21     10802. (a) Any person who knowingly alters, counterfeits,  
22 defaces, destroys, disguises, falsifies, forges, obliterates, or  
23 removes vehicle identification numbers, with the intent to  
24 misrepresent the identity or prevent the identification of motor  
25 vehicles or motor vehicle parts, for the purpose of sale, transfer,  
26 import, or export, is guilty of a public offense and, upon conviction,  
27 shall be punished by imprisonment in the state prison for 16  
28 months, or two or three years, or by a fine of not more than  
29 twenty-five thousand dollars (\$25,000), or by both the fine and  
30 imprisonment, or by up to one year in the county jail, or by a fine  
31 of not more than one thousand dollars (\$1,000), or by both the fine  
32 and imprisonment.

33     (b) *Alternatively, on or after the operative date of an applicable*  
34 *rule or rules proposed by the California Public Safety Commission,*  
35 *a person who violates this section shall be punished as provided*  
36 *in the applicable sentencing rules.*

37     SEC. 343. *Section 10803 of the Vehicle Code is amended to*  
38 *read:*

39     10803. (a) Any person who buys with the intent to resell,  
40 disposes of, sells, or transfers, more than one motor vehicle or

1 parts from more than one motor vehicle, with the knowledge that  
2 the vehicle identification numbers of the motor vehicles or motor  
3 vehicle parts have been altered, counterfeited, defaced, destroyed,  
4 disguised, falsified, forged, obliterated, or removed for the purpose  
5 of misrepresenting the identity or preventing the identification of  
6 the motor vehicles or motor vehicle parts, is guilty of a public  
7 offense and, upon conviction, shall be punished by imprisonment  
8 in the state prison for two, four, or six years, or by a fine of not  
9 more than sixty thousand dollars (\$60,000), or by both ~~the~~ *that*  
10 fine and imprisonment, or by up to one year in the county jail, or  
11 by a fine of not more than one thousand dollars (\$1,000), or by  
12 both the fine and imprisonment.

13 (b) Any person who possesses, for the purpose of sale, transfer,  
14 import, or export, more than one motor vehicle or parts from more  
15 than one motor vehicle, with the knowledge that the vehicle  
16 identification numbers of the motor vehicles or motor vehicle parts  
17 have been altered, counterfeited, defaced, destroyed, disguised,  
18 falsified, forged, obliterated, or removed for the purpose of  
19 misrepresenting the identity or preventing the identification of the  
20 motor vehicles or motor vehicle parts, is guilty of a public offense  
21 and, upon conviction, shall be punished by imprisonment in the  
22 state prison for 16 months, or two or three years, or by a fine of  
23 not more than thirty thousand dollars (\$30,000), or by both ~~the~~  
24 *that* fine and imprisonment, or by imprisonment in the county jail  
25 not exceeding one year or by a fine of not more than one thousand  
26 dollars (\$1,000) or by both the fine and imprisonment.

27 (c) *Alternatively, on or after the operative date of an applicable*  
28 *rule or rules proposed by the California Public Safety Commission,*  
29 *a person who violates this section shall be punished as provided*  
30 *in the applicable sentencing rules.*

31 *SEC. 344. Section 10851 of the Vehicle Code is amended to*  
32 *read:*

33 10851. (a) Any person who drives or takes a vehicle, *which*  
34 *is of a value exceeding two thousand five hundred dollars (\$2,500),*  
35 not his or her own, without the consent of the owner thereof, and  
36 with intent either to permanently or temporarily deprive the owner  
37 thereof of his or her title to or possession of the vehicle, whether  
38 with or without intent to steal the vehicle, or any person who is a  
39 party or an accessory to or an accomplice in the driving or  
40 unauthorized taking or stealing, is guilty of a public offense and,

1 upon conviction thereof, shall be punished by imprisonment in a  
2 county jail for not more than one year, or in the state prison or by  
3 a fine of not more than five thousand dollars (\$5,000), or by both  
4 ~~the that~~ fine and imprisonment. *If the value of the vehicle is not*  
5 *more than two thousand five hundred dollars (\$2,500), the offense*  
6 *is punishable by imprisonment in a county jail for not more than*  
7 *one year, a fine of not more than five thousand dollars (\$5,000),*  
8 *or by both that fine and imprisonment.*

9 (b) If the vehicle is (1) an ambulance, as defined in subdivision  
10 (a) of Section 165, (2) a distinctively marked vehicle of a law  
11 enforcement agency or fire department, taken while the ambulance  
12 or vehicle is on an emergency call and this fact is known to the  
13 person driving or taking, or any person who is party or an accessory  
14 to or an accomplice in the driving or unauthorized taking or  
15 stealing, or (3) a vehicle which has been modified for the use of a  
16 disabled veteran or any other disabled person and which displays  
17 a distinguishing license plate or placard issued pursuant to Section  
18 22511.5 or 22511.9 and this fact is known or should reasonably  
19 have been known to the person driving or taking, or any person  
20 who is party or an accessory in the driving or unauthorized taking  
21 or stealing, the offense is a felony punishable by imprisonment in  
22 the state prison for two, three, or four years or by a fine of not  
23 more than ten thousand dollars (\$10,000), or by both ~~the that~~ fine  
24 and imprisonment.

25 (c) In any prosecution for a violation of subdivision (a) or (b),  
26 the consent of the owner of a vehicle to its taking or driving shall  
27 not in any case be presumed or implied because of the owner's  
28 consent on a previous occasion to the taking or driving of the  
29 vehicle by the same or a different person.

30 (d) The existence of any fact which makes subdivision (b)  
31 applicable shall be alleged in the accusatory pleading, and either  
32 admitted by the defendant in open court, or found to be true by the  
33 jury trying the issue of guilt or by the court where guilt is  
34 established by plea of guilty or nolo contendere or by trial by the  
35 court sitting without a jury.

36 (e) Any person who has been convicted of one or more previous  
37 felony violations of this section, or felony grand theft of a vehicle  
38 in violation of subdivision (d) of Section 487 of the Penal Code,  
39 former subdivision (3) of Section 487 of the Penal Code, as that  
40 section read prior to being amended by Section 4 of Chapter 1125

1 of the Statutes of 1993, or Section 487h of the Penal Code, is  
2 punishable as set forth in Section 666.5 of the Penal Code. The  
3 existence of any fact that would bring a person under Section 666.5  
4 of the Penal Code shall be alleged in the information or indictment  
5 and either admitted by the defendant in open court, or found to be  
6 true by the jury trying the issue of guilt or by the court where guilt  
7 is established by plea of guilty or nolo contendere, or by trial by  
8 the court sitting without a jury.

9 ~~(f) This section shall become operative on January 1, 1997.~~

10 *(f) Alternatively, on or after the operative date of an applicable*  
11 *rule or rules proposed by the California Public Safety Commission,*  
12 *a person who violates this section shall be punished as provided*  
13 *in the applicable sentencing rules.*

14 *SEC. 345. Section 10851.5 of the Vehicle Code is amended to*  
15 *read:*

16 10851.5. Any person who takes binder chains, required under  
17 regulations adopted pursuant to Section 31510, having a value of  
18 ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)* or  
19 less which chains are not his own, without the consent of the owner  
20 thereof, and with intent either permanently or temporarily to  
21 deprive the owner thereof of his title to or possession of the binder  
22 chains whether with or without intent to steal the same, or any  
23 person who is a party or accessory to or an accomplice in the  
24 unauthorized taking or stealing is guilty of a misdemeanor, and  
25 upon conviction thereof shall be punished by imprisonment in the  
26 county jail for not less than six months or by a fine of not less than  
27 one thousand dollars (\$1,000) or by both such fine and  
28 imprisonment. The consent of the owner of the binder chain to its  
29 taking shall not in any case be presumed or implied because of  
30 such owner's consent on a previous occasion to the taking of the  
31 binder chain by the same or a different person.

32 *SEC. 346. Section 42002.4 of the Vehicle Code is amended to*  
33 *read:*

34 42002.4. A violation of Section 10751 shall be punished by  
35 imprisonment in the county jail not exceeding six months if the  
36 value of the property does not exceed ~~four hundred dollars (\$400)~~  
37 *nine hundred fifty dollars (\$950)*, and by imprisonment in the  
38 county jail not exceeding one year if the value of the property is  
39 more than ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars*  
40 *(\$950).*

1     SEC. 347. *Section 10980 of the Welfare and Institutions Code*  
2     *is amended to read:*

3     10980. (a) Any person who, willfully and knowingly, with the  
4     intent to deceive, makes a false statement or representation or  
5     knowingly fails to disclose a material fact in order to obtain aid  
6     under the provisions of this division or who, knowing he or she is  
7     not entitled thereto, attempts to obtain aid or to continue to receive  
8     aid to which he or she is not entitled, or to receive a larger amount  
9     than that to which he or she is legally entitled, is guilty of a  
10    misdemeanor, punishable by imprisonment in the county jail for  
11    a period of not more than six months, by a fine of not more than  
12    five hundred dollars (\$500), or by both imprisonment and fine.

13    (b) Any person who knowingly makes more than one application  
14    for aid under the provisions of this division with the intent of  
15    establishing multiple entitlements for any person for the same  
16    period or who makes an application for that aid for a fictitious or  
17    nonexistent person or by claiming a false identity for any person  
18    is guilty of a felony, punishable by imprisonment in the state prison  
19    for a period of 16 months, two years, or three years, by a fine of  
20    not more than five thousand dollars (\$5,000), or by both *that*  
21    imprisonment and fine; or by imprisonment in the county jail for  
22    a period of not more than one year, or by a fine of not more than  
23    one thousand dollars (\$1,000), or by both imprisonment and fine.

24    (c) Whenever any person has, willfully and knowingly, with  
25    the intent to deceive, by means of false statement or representation,  
26    or by failing to disclose a material fact, or by impersonation or  
27    other fraudulent device, obtained or retained aid under the  
28    provisions of this division for himself or herself or for a child not  
29    in fact entitled thereto, the person obtaining this aid shall be  
30    punished as follows:

31    (1) If the total amount of the aid obtained or retained is ~~four~~  
32    ~~hundred dollars (\$400)~~ *nine hundred and fifty dollars (\$950)* or  
33    less, by imprisonment in the county jail for a period of not more  
34    than six months, by a fine of not more than five hundred dollars  
35    (\$500), or by both imprisonment and fine.

36    (2) If the total amount of the aid obtained or retained is more  
37    than ~~four hundred dollars (\$400)~~ *nine hundred and fifty dollars*  
38    *(\$950)*, by imprisonment in the state prison for a period of 16  
39    months, two years, or three years, by a fine of not more than five  
40    thousand dollars (\$5,000), or by both *that* imprisonment and fine;

1 or by imprisonment in the county jail for a period of not more than  
2 one year, by a fine of not more than one thousand dollars (\$1,000),  
3 or by both imprisonment and fine.

4 (d) Any person who knowingly uses, transfers, acquires, or  
5 possesses blank authorizations to participate in the federal ~~Food~~  
6 ~~Stamp~~ *Supplemental Nutrition Assistance* Program in any manner  
7 not authorized by Chapter 10 (commencing with Section 18900)  
8 of Part 6 with the intent to defraud is guilty of a felony, punishable  
9 by imprisonment in the state prison for a period of 16 months, two  
10 years, or three years, by a fine of not more than five thousand  
11 dollars (\$5,000), or by both *that* imprisonment and fine.

12 (e) Any person who counterfeits or alters or knowingly uses,  
13 transfers, acquires, or possesses counterfeited or altered  
14 authorizations to participate in the federal ~~Food Stamp~~  
15 *Supplemental Nutrition Assistance* Program or to receive food  
16 stamps or electronically transferred benefits in any manner not  
17 authorized by the Food Stamp Act of 1964 (Public Law 88-525  
18 and all amendments thereto) *or the Food and Nutrition Act of 2008*  
19 *(7 U.S.C. Sec. 2011 et seq.)* or the federal regulations pursuant to  
20 the act is guilty of forgery.

21 (f) Any person who fraudulently appropriates food stamps,  
22 electronically transferred benefits, or authorizations to participate  
23 in the federal ~~Food Stamp~~ *Supplemental Nutrition Assistance*  
24 Program with which he or she has been entrusted pursuant to his  
25 or her duties as a public employee is guilty of embezzlement of  
26 public funds.

27 (g) Any person who knowingly uses, transfers, sells, purchases,  
28 or possesses food stamps, electronically transferred benefits, or  
29 authorizations to participate in the federal ~~Food Stamp~~  
30 *Supplemental Nutrition Assistance* Program in any manner not  
31 authorized by Chapter 10 (commencing with Section 18900), of  
32 Part 6, or by the federal Food Stamp Act of 1977 (Public Law  
33 95-113 and all amendments thereto) *or the Food and Nutrition Act*  
34 *of 2008 (7 U.S.C. Sec. 2011 et seq.)* (1) is guilty of a misdemeanor  
35 if the face value of the food stamp benefits or the authorizations  
36 to participate is ~~four hundred dollars (\$400)~~ *nine hundred and fifty*  
37 *dollars (\$950)* or less, and shall be punished by imprisonment in  
38 the county jail for a period of not more than six months, by a fine  
39 of not more than five hundred dollars (\$500), or by both  
40 imprisonment and fine, or (2) is guilty of a felony if the face value

1 of the food stamps or the authorizations to participate exceeds ~~four~~  
2 ~~hundred dollars (\$400)~~ *nine hundred and fifty dollars (\$950)*, and  
3 shall be punished by imprisonment in the state prison for a period  
4 of 16 months, two years, or three years, by a fine of not more than  
5 five thousand dollars (\$5,000), or by both *that* imprisonment and  
6 fine, or by imprisonment in the county jail for a period of not more  
7 than one year, or by a fine of not more than one thousand dollars  
8 (\$1,000), or by both imprisonment and fine.

9 (h) (1) If the violation of subdivision (f) or (g) is committed by  
10 means of an electronic transfer of benefits, in addition and  
11 consecutive to the penalties for the violation, or attempted  
12 violation, of those subdivisions, the court shall impose the  
13 following punishment:

14 (A) If the electronic transfer of benefits exceeds fifty thousand  
15 dollars (\$50,000), an additional term of one year in state prison.

16 (B) If the electronic transfer of benefits exceeds one hundred  
17 fifty thousand dollars (\$150,000), an additional term of two years  
18 in state prison.

19 (C) If the electronic transfer of benefits exceeds one million  
20 dollars (\$1,000,000), an additional term of three years in state  
21 prison.

22 (D) If the electronic transfer of benefits exceeds two million  
23 five hundred thousand dollars (\$2,500,000), an additional term of  
24 four years.

25 (2) In any accusatory pleading involving multiple charges of  
26 violations of subdivision (f) or (g), or both, committed by means  
27 of an electronic transfer of benefits, the additional terms provided  
28 in paragraph (1) may be imposed if the aggregate losses to the  
29 victims from all violations exceed the amounts specified in this  
30 paragraph and arise from a common scheme or plan.

31 (i) A person who is punished by an additional term of  
32 imprisonment under another provision of law for a violation of  
33 subdivision (f) or (g) shall not receive an additional term of  
34 imprisonment under subdivision (h).

35 (j) *Alternatively, on or after the operative date of an applicable*  
36 *rule or rules proposed by the California Public Safety Commission,*  
37 *a person who violates this section shall be punished as provided*  
38 *in the applicable sentencing rules.*

39 *SEC. 348. Section 15656 of the Welfare and Institutions Code*  
40 *is amended to read:*



1 15656. (a) Any person who knows or reasonably should know  
2 that a person is an elder or dependent adult and who, under  
3 circumstances or conditions likely to produce great bodily harm  
4 or death, willfully causes or permits any elder or dependent adult  
5 to suffer, or inflicts unjustifiable physical pain or mental suffering  
6 upon him or her, or having the care or custody of any elder or  
7 dependent adult, willfully causes or permits the person or health  
8 of the elder or dependent adult to be injured, or willfully causes  
9 or permits the elder or dependent adult to be placed in a situation  
10 such that his or her person or health is endangered, is punishable  
11 by imprisonment in the county jail not exceeding one year, or in  
12 the state prison for two, three, or four years.

13 (b) Any person who knows or reasonably should know that a  
14 person is an elder or dependent adult and who, under circumstances  
15 or conditions other than those likely to produce great bodily harm  
16 or death, willfully causes or permits any elder or dependent adult  
17 to suffer, or inflicts unjustifiable physical pain or mental suffering  
18 on him or her, or having the care or custody of any elder or  
19 dependent adult, willfully causes or permits the person or health  
20 of the elder or dependent adult to be injured or willfully causes or  
21 permits the elder or dependent adult to be placed in a situation  
22 such that his or her person or health may be endangered, is guilty  
23 of a misdemeanor.

24 (c) Any caretaker of an elder or a dependent adult who violates  
25 any provision of law prescribing theft or embezzlement, with  
26 respect to the property of that elder or dependent adult, is  
27 punishable by imprisonment in the county jail not exceeding one  
28 year, or in the state prison for two, three, or four years when the  
29 money, labor, or real or personal property taken is of a value  
30 exceeding ~~four hundred dollars (\$400)~~ *nine hundred fifty dollars*  
31 *(\$950)*, and by a fine not exceeding one thousand dollars (\$1,000),  
32 or by imprisonment in the county jail not exceeding one year, or  
33 by both that imprisonment and fine, when the money, labor, or  
34 real or personal property taken is of a value not exceeding ~~four~~  
35 ~~hundred dollars (\$400)~~ *nine hundred fifty dollars (\$950)*.

36 (d) As used in this section, "caretaker" means any person who  
37 has the care, custody, or control of or who stands in a position of  
38 trust with, an elder or a dependent adult.

39 (e) Conduct covered in subdivision (b) of Section 15610.57  
40 shall not be subject to this section.

1     *SEC. 349. The Judicial Council shall consider the adoption of*  
2     *appropriate modifications to the Criminal Rules of Court, and of*  
3     *other judicial branch policies, procedures, and programs, affecting*  
4     *felony probation services that would support implementation of*  
5     *the evidence-based probation supervision practices described in*  
6     *Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of*  
7     *the Penal Code.*

8     *SEC. 350. Section 50 of this act shall not become operative*  
9     *unless fenfluramine and its salts and isomers are removed from*  
10    *Schedule IV of the federal Controlled Substances Act (21 U.S.C.*  
11    *Sec. 812; 21 C.F.R. 1308.14), in which case Section 51, to the*  
12    *extent it remains effective, shall become inoperative and be*  
13    *repealed.*

14    *SEC. 351. The Department of Corrections and Rehabilitation*  
15    *shall implement the changes made by this act regarding time*  
16    *credits in a reasonable time. However, in light of limited case*  
17    *management resources, it is expected that there will be some delays*  
18    *in determining the amount of additional time credits to be granted*  
19    *against inmate sentences resulting from changes in law pursuant*  
20    *to this act. An inmate shall have no cause of action or claim for*  
21    *damages because of any additional time spent in custody due to*  
22    *reasonable delays in implementing the changes in the credit*  
23    *provisions of this act. However, to the extent that excess days in*  
24    *state prison due to delays in implementing this act are identified,*  
25    *they shall be considered as time spent on parole, if any parole*  
26    *period is applicable.*

27    *SEC. 352. No reimbursement is required by this act pursuant*  
28    *to Section 6 of Article XIII B of the California Constitution for*  
29    *certain costs that may be incurred by a local agency or school*  
30    *district because, in that regard, this act creates a new crime or*  
31    *infraction, eliminates a crime or infraction, or changes the penalty*  
32    *for a crime or infraction, within the meaning of Section 17556 of*  
33    *the Government Code, or changes the definition of a crime within*  
34    *the meaning of Section 6 of Article XIII B of the California*  
35    *Constitution.*

36    *However, if the Commission on State Mandates determines that*  
37    *this act contains other costs mandated by the state, reimbursement*  
38    *to local agencies and school districts for those costs shall be made*  
39    *pursuant to Part 7 (commencing with Section 17500) of Division*  
40    *4 of Title 2 of the Government Code.*

1     ~~SECTION 1. Section 15819.40 of the Government Code is~~  
2     ~~amended to read:~~

3     ~~15819.40. (a) (1) (A) The Department of Corrections and~~  
4     ~~Rehabilitation may design, construct, or renovate housing units,~~  
5     ~~support buildings, and programming space in order to add up to~~  
6     ~~12,000 beds at~~

7     ~~facilities under its jurisdiction. The department shall complete~~  
8     ~~site assessments at facilities at which it intends to construct or~~  
9     ~~renovate additional housing units, support buildings, and~~  
10    ~~programming space. The department may use the funding provided~~  
11    ~~in Section 28 of Chapter 7 of the Statutes of 2007 to complete~~  
12    ~~these site assessments. After completing these site assessments,~~  
13    ~~the department shall define the scope and cost of each project~~  
14    ~~pursuant to subdivision (d):~~

15    ~~(B) The authority contained in subparagraph (A) may be used~~  
16    ~~to develop new beds including appropriate programmatic space~~  
17    ~~pursuant to paragraph (2) of subdivision (a) and, together with the~~  
18    ~~funds appropriated in Section 15819.403 for this purpose, shall~~  
19    ~~constitute the scope of a single capital outlay project for purposes~~  
20    ~~of calculating augmentations pursuant to Section 13332.11 as~~  
21    ~~described in Section 15819.401.~~

22    ~~(2) Any new beds constructed pursuant to this section shall be~~  
23    ~~supported by rehabilitative programming for inmates, including,~~  
24    ~~but not limited to, education, vocational programs, substance abuse~~  
25    ~~treatment programs, employment programs, and prerelease~~  
26    ~~planning.~~

27    ~~(3) The purpose of beds constructed pursuant to this section is~~  
28    ~~to replace the temporary beds currently in use, and they are not~~  
29    ~~intended to house additional inmates. For the purposes of this~~  
30    ~~section, "temporary beds" shall be defined as those that are placed~~  
31    ~~in gymnasiums, classrooms, hallways, or other public spaces that~~  
32    ~~were not constructed for the purpose of housing inmates.~~

33    ~~(b) The Department of Corrections and Rehabilitation may~~  
34    ~~acquire land, design, construct, and renovate reentry program~~  
35    ~~facilities to provide housing for up to 6,000 inmates as authorized~~  
36    ~~in Chapter 9.8 (commencing with Section 6271) of the Penal Code~~  
37    ~~and, together with the funds appropriated in Section 15819.403~~  
38    ~~for this purpose, this shall constitute the scope and cost of a single~~  
39    ~~capital outlay project for purposes of calculating augmentations~~  
40    ~~pursuant to Section 13332.11 as described in Section 15819.401.~~

~~(e) The Department of Corrections and Rehabilitation is authorized to design, construct, and establish new buildings at facilities under the jurisdiction of the department to provide medical, dental, and mental health treatment or housing for up to 6,000 inmates and, together with the funds appropriated in Section 15819.403 for this purpose, this shall constitute the scope and cost of a single capital outlay project for purposes of calculating augmentations pursuant to Section 13332.11 as described in Section 15819.401.~~

~~(d) (1) The reporting requirements set forth in Sections 7000 to 7003.5, inclusive, of the Penal Code, shall apply separately to each institution or facility. The scope and cost of the project for each institution or facility shall be established individually by the State Public Works Board. The amount of the total appropriations in Section 15819.403 that is necessary for each project shall be allocated to each institution or facility project. The appropriations may be allocated based on current estimates. These initial allocations may be adjusted commensurate to changes that occur during the progression of the projects. As allocations are made or adjusted, the anticipated deficit or savings shall be continuously tracked and reported. Once the total appropriation has been allocated, any augmentation necessary to fund an anticipated deficit shall be based on the total applicable capital outlay appropriation in Section 15819.403 and applied to each project allocation as necessary.~~

~~(2) For each institution, the Department of Corrections and Rehabilitation shall report to the Joint Legislative Budget Committee identifying those projects that the department proposes to undertake, and any support buildings, and programming space to support up to 12,000 new beds. For each institution, the department shall describe the scope, budget, schedule, number of beds by security level, along with approximate square footage of support buildings, and programming space to be constructed or renovated. If after providing these reports, the committee fails to take any action with respect to each report within 30 days after submittal, this inaction shall be deemed to be approval for purposes of this section, and the department is authorized to proceed to design, construct, or renovate housing units, support buildings, and programming space for each institution for which a report has been approved.~~

1     ~~(3) The department shall notify the Joint Legislative Budget~~  
2     ~~Committee 45 days prior to the submission of preliminary plans~~  
3     ~~to the board for each project authorized in this section. If after~~  
4     ~~providing these notifications, the committee fails to take any action~~  
5     ~~with respect to each report within 45 days after submittal, this~~  
6     ~~inaction shall be deemed to be approval for purposes of this section,~~  
7     ~~and the department is authorized to design, construct, or renovate~~  
8     ~~housing units, support buildings, and programming space for each~~  
9     ~~institution for which a report has been approved.~~

10    ~~(4) The Department of Corrections and Rehabilitation shall~~  
11    ~~report quarterly to the Joint Legislative Budget Committee on the~~  
12    ~~allocations from the appropriations in Section 15819.403 and the~~  
13    ~~anticipated deficit or savings. Each reentry program facility~~  
14    ~~authorized under subdivision (b) shall be considered to be a~~  
15    ~~separate project for reporting purposes pursuant to Sections 7000~~  
16    ~~and 7003.5 of the Penal Code. Each medical, mental health, or~~  
17    ~~dental building improvement authorized under subdivision (c)~~  
18    ~~shall be considered to be a separate project, except that building~~  
19    ~~improvements that have a related purpose and that are located at~~  
20    ~~the same institution may be considered one project, for reporting~~  
21    ~~purposes pursuant to Sections 7000 and 7003.5 of the Penal Code.~~

22    ~~SEC. 2. Section 15819.402 of the Government Code is amended~~  
23    ~~to read:~~

24    ~~15819.402. For all projects authorized by this chapter, the board~~  
25    ~~may borrow funds for project costs, including studies, acquisition,~~  
26    ~~design, construction, and construction-related costs from the Pooled~~  
27    ~~Money Investment Account pursuant to Sections 16312 and 16313.~~  
28    ~~Except for preliminary expenditures to develop the scope, budget,~~  
29    ~~programming, and scheduling for a project, project funds expended~~  
30    ~~prior to project approval by the board shall not be reimbursable~~  
31    ~~from the proceeds of the bonds.~~

32    ~~SEC. 3. Section 15819.403 of the Government Code is amended~~  
33    ~~to read:~~

34    ~~15819.403. (a) The board may issue revenue bonds, negotiable~~  
35    ~~notes, or negotiable bond anticipation notes pursuant to this part~~  
36    ~~to finance the acquisition, design, and construction, including,~~  
37    ~~without limitation, renovation, and the costs of interim financing~~  
38    ~~of the projects authorized in Section 15819.40. Authorized costs~~  
39    ~~for acquisition, design, construction, including, without limitation,~~  
40    ~~renovation, and construction-related costs for all projects approved~~

~~1 for financing by the board shall not exceed one billion eight  
2 hundred million dollars (\$1,800,000,000) for subdivision (a) of  
3 Section 15819.40, nine hundred seventy-five million dollars  
4 (\$975,000,000) for subdivision (b) of Section 15819.40, and eight  
5 hundred fifty-seven million one hundred thousand dollars  
6 (\$857,100,000) for subdivision (c) of Section 15819.40.~~

~~7 (b) Notwithstanding Section 13340, funds derived from interim  
8 financing, revenue bonds, negotiable notes, or negotiable bond  
9 anticipation notes issued pursuant to this chapter are hereby  
10 continuously appropriated to the board on behalf of the Department  
11 of Corrections and Rehabilitation for the purposes specified in  
12 Section 15819.40.~~

~~13 (c) For the purposes of this section, “construction-related costs”  
14 shall include mitigation costs of local government and school  
15 districts and shall be made available pursuant to subdivisions (c)  
16 and (d) of Section 7005.5 of the Penal Code. It is the intent of the  
17 Legislature that any payments made for mitigation shall be made  
18 in a timely manner.~~

~~19 SEC. 4. Section 15819.404 of the Government Code is amended  
20 to read:~~

~~21 15819.404. Notwithstanding Section 15819.403, the amount  
22 of revenue bonds, negotiable notes, or negotiable bond anticipation  
23 notes to be sold may include the following:~~

~~24 (a) The cost of acquisition, design, construction, including,  
25 without limitation, renovation, or construction management and  
26 supervision, and other costs related to the acquisition, design, and  
27 construction, including, without limitation, renovation, of the  
28 facilities, including augmentations.~~

~~29 (b) Sums necessary to pay interim financing.~~

~~30 (c) In addition to the amount authorized by Section 15819.403,  
31 any additional amount as may be authorized by the board to  
32 establish a reasonable construction reserve and to pay the costs of  
33 financing, including the payment of interest during acquisition or  
34 interest prior to, during, and for a period of six months after  
35 construction of the project, the cost of financing a debt-service  
36 reserve fund, and the cost of issuance of permanent financing for  
37 the project. This additional amount may include interest payable  
38 on any interim loan for the facility from the General Fund or the  
39 Pooled Money Investment Account pursuant to Sections 16312  
40 and 16313.~~

1     ~~SEC. 5. Section 15819.41 of the Government Code is amended~~  
2     ~~to read:~~

3     ~~15819.41. (a) The Department of Corrections and~~  
4     ~~Rehabilitation shall complete site assessments at facilities where~~  
5     ~~it intends to construct or renovate additional housing units, support~~  
6     ~~buildings, and programming space in order to add up to 4,000 beds~~  
7     ~~at facilities under its jurisdiction. The department may use the~~  
8     ~~funding provided in Section 28 of Chapter 7 of the Statutes of 2007~~  
9     ~~to complete the site assessments. After completing these site~~  
10    ~~assessments the department shall define the scope and costs of~~  
11    ~~each project pursuant to subdivision (d). This authorization is in~~  
12    ~~addition to the authorization in subdivision (a) of Section 15819.40.~~  
13    ~~Any new beds constructed shall be supported by rehabilitative~~  
14    ~~programming for inmates, including, but not limited to, education,~~  
15    ~~vocational programs, substance abuse treatment programs,~~  
16    ~~employment programs, and prerelease planning. The Department~~  
17    ~~of Corrections and Rehabilitation is authorized to design, construct,~~  
18    ~~or renovate housing units, support buildings, and programming~~  
19    ~~space in order to add up to 4,000 beds at facilities under its~~  
20    ~~jurisdiction. This authorization is in addition to the authorization~~  
21    ~~in subdivision (a) of Section 15819.40. Any new beds constructed~~  
22    ~~shall be supported by rehabilitative programming for inmates,~~  
23    ~~including, but not limited to, education, vocational programs,~~  
24    ~~substance abuse treatment programs, employment programs, and~~  
25    ~~prerelease planning. The authority contained in this subdivision~~  
26    ~~together with the funds appropriated in Section 15819.413 for this~~  
27    ~~purpose, shall constitute the scope and cost of a single capital~~  
28    ~~outlay project for purposes of calculating augmentations pursuant~~  
29    ~~to Section 13332.11 as described in Section 15819.411.~~

30    ~~(b) The Department of Corrections and Rehabilitation is~~  
31    ~~authorized to design and construct new, or renovate existing,~~  
32    ~~buildings at facilities under the jurisdiction of the department to~~  
33    ~~provide medical, dental, and mental health treatment or housing~~  
34    ~~for up to 2,000 inmates. This authorization is in addition to the~~  
35    ~~authorization in subdivision (c) of Section 15819.40. The authority~~  
36    ~~contained in this subdivision together with the funds appropriated~~  
37    ~~in Section 15819.413 for this purpose, shall constitute the scope~~  
38    ~~and cost of a single capital outlay project for purposes of~~  
39    ~~calculating augmentations pursuant to Section 13332.11 as~~  
40    ~~described in Section 15819.411.~~

~~(e) The Department of Corrections and Rehabilitation is authorized to construct, establish, and operate reentry program facilities throughout the state that will house up to 10,000 inmates pursuant to Section 6271.1 of the Penal Code, and together with the funds appropriated in Section 15819.413 for this purpose, this shall constitute the scope and cost of a single capital outlay project for purposes of calculating augmentations pursuant to Section 13332.11 as described in Section 15819.411.~~

~~(d) (1) The reporting requirements set forth in Sections 7000 to 7003.5, inclusive, of the Penal Code, shall apply separately to each institution or facility. The scope and cost of the project for each institution or facility shall be established by the State Public Works Board individually. The amount of the total appropriations in Section 15819.413 that is necessary for each project shall be allocated to each institution or facility project. The appropriations may be allocated based on current estimates. These initial allocations may be adjusted commensurate to changes that occur during the progression of the projects. As allocations are made or adjusted, the anticipated deficit or savings shall be continuously traced and reported. Once the total appropriation has been allocated, any augmentation necessary to fund an anticipated deficit shall be based on the total applicable capital outlay appropriation in Section 15819.413 and applied to each project allocation as necessary.~~

~~(2) For each institution, the department shall report to the Joint Legislative Budget Committee, identifying those projects that the department proposes to undertake, and any support buildings, and programming space to support up to 4,000 new beds. For each institution, the department shall describe the scope, budget, schedule, number of beds by security level, along with approximate square footage of support buildings, and programming space to be constructed or renovated. If after providing these reports, the committee fails to take any action with respect to each report within 30 days after submittal, this inaction shall be deemed to be approval for purposes of this section, and the department is authorized to proceed to design, construct, or renovate housing units, support buildings, and programming space for each institution for which a report has been approved.~~

~~(3) The Department of Corrections and Rehabilitation shall notify the Joint Legislative Budget Committee 45 days prior to the submission of preliminary plans to the board for each project~~



1 authorized in this section. If after providing these notifications,  
2 the committee fails to take any action with respect to each report  
3 within 45 days after submittal, this inaction shall be deemed to be  
4 approval for purposes of this section, and the department is  
5 authorized to design, construct, or renovate housing units, support  
6 buildings, and programming space for each institution for which  
7 a report has been approved.

8 (4) ~~The Department of Corrections and Rehabilitation shall~~  
9 ~~report quarterly to the Joint Legislative Budget Committee on the~~  
10 ~~allocations from the appropriations in Section 15819.413 and the~~  
11 ~~anticipated deficit or savings. Each reentry program facility~~  
12 ~~authorized under subdivision (e) shall be considered to be a~~  
13 ~~separate project. Each medical, mental health, or dental building~~  
14 ~~improvement authorized under subdivision (b) shall be considered~~  
15 ~~to be a separate project, except that building improvements that~~  
16 ~~have a related purpose and that are located at the same institution~~  
17 ~~may be considered one project, for reporting purposes pursuant to~~  
18 ~~Sections 7000 and 7003.5 of the Penal Code.~~

19 SEC. 6. ~~Section 15819.412 of the Government Code is amended~~  
20 ~~to read:~~

21 15819.412. ~~For all projects authorized by this chapter, the board~~  
22 ~~may borrow funds for project costs, including studies, design,~~  
23 ~~construction, including, without limitation, renovation, and~~  
24 ~~construction-related costs from the Pooled Money Investment~~  
25 ~~Account pursuant to Sections 16312 and 16313. Except for~~  
26 ~~preliminary expenditures to develop the scope, budget,~~  
27 ~~programming, and scheduling for a project, project funds expended~~  
28 ~~prior to project approval by the board shall not be reimbursable~~  
29 ~~from the proceeds of the bonds.~~

30 SEC. 7. ~~Section 15819.414 of the Government Code is amended~~  
31 ~~to read:~~

32 15819.414. ~~Notwithstanding Section 15819.413, the amount~~  
33 ~~of revenue bonds, negotiable notes, or negotiable bond anticipation~~  
34 ~~notes to be sold may include the following:~~

35 (a) ~~The cost of design, construction, including, without~~  
36 ~~limitation, renovation, or construction management and~~  
37 ~~supervision, and other costs related to the design and construction,~~  
38 ~~including, without limitation, renovation, of the facilities, including~~  
39 ~~augmentations.~~

40 (b) ~~Sums necessary to pay interim financing.~~

~~(e) In addition to the amount authorized by Section 15819.413, any additional amount as may be authorized by the board to establish a reasonable construction reserve and to pay the costs of financing, including the payment of interest during acquisition or interest prior to, during, and for a period of six months after construction of the project, the cost of financing a debt-service reserve fund, and the cost of issuance of permanent financing for the project. This additional amount may include interest payable on any interim loan for the facility from the General Fund or the Pooled Money Investment Account pursuant to Sections 16312 and 16313.~~

~~SEC. 8. Section 15819.417 of the Government Code is amended to read:~~

~~15819.417. The State Public Works Board may not release any funds pursuant to this chapter until the panel created pursuant to Section 7021 of the Penal Code has certified that conditions listed in that section have been met. The authority provided by this chapter shall expire on January 1, 2014, and no project shall be commenced after that date, but projects already commenced may be completed and financed through the issuance of bonds pursuant to this chapter.~~

~~SEC. 9. Section 15820.903 of the Government Code is amended to read:~~

~~15820.903. (a) The SPWB may issue up to seven hundred fifty million dollars (\$750,000,000) in revenue bonds, notes, or bond anticipation notes, pursuant to Chapter 5 of Part 10b of Division 3 of Title 2 (commencing with Section 15830) to finance the acquisition, design, or construction, and a reasonable construction reserve, of approved local jail facilities described in Section 15820.901, and any additional amount authorized under Section 15849.6 to pay for the cost of financing.~~

~~(b) Proceeds from the revenue bonds, notes, or bond anticipation notes may be utilized to reimburse a participating county for the costs of acquisition, preliminary plans, working drawings, and construction for approved projects.~~

~~(c) Notwithstanding Section 13340, funds derived pursuant to this section and Section 15820.902 are continuously appropriated for purposes of this chapter.~~

~~(d) This section shall become inoperative on June 30, 2017, and no project may be commenced after that date; however, projects~~

1 that have already commenced by that date may be completed and  
2 financed with bonds issued pursuant to this chapter.

3 SEC. 10. ~~Section 15820.904 is added to the Government Code,~~  
4 ~~to read:~~

5 15820.904. ~~In support of this state funding, the Legislature~~  
6 ~~finds and declares all of the following:~~

7 ~~(a) The county jail system needs more capacity.~~

8 ~~(b) Without increased capacity, public safety throughout the~~  
9 ~~state may be jeopardized by offenders who either remain in the~~  
10 ~~community or are released early due to lack of jail capacity.~~

11 ~~(c) By expanding jail capacity, this funding will serve a critical~~  
12 ~~state purpose by promoting public safety.~~

13 ~~(d) This purpose represents valuable consideration in exchange~~  
14 ~~for this state action.~~

15 SEC. 11. ~~Section 15820.911 of the Government Code is~~  
16 ~~amended to read:~~

17 15820.911. ~~(a) The CDCR, a participating county, and the~~  
18 ~~SPWB are authorized to acquire, design, and construct, a local jail~~  
19 ~~facility approved by the Corrections Standards Authority (CSA)~~  
20 ~~pursuant to Section 15820.916, or a site or sites owned by, or~~  
21 ~~subject to a lease or option to purchase held by a participating~~  
22 ~~county. The ownership interest of a participating county in the site~~  
23 ~~or sites for a local jail facility must be determined by the SPWB~~  
24 ~~to be adequate for purposes of its financing in order to be eligible~~  
25 ~~under this chapter.~~

26 ~~(b) Notwithstanding Section 15815, a participating county may~~  
27 ~~acquire, design, or construct the local jail facility in accordance~~  
28 ~~with its local contracting authority. Notwithstanding Section 14951,~~  
29 ~~the participating county may assign an inspector during the~~  
30 ~~construction of the project.~~

31 ~~(c) The CDCR, a participating county and the SPWB shall enter~~  
32 ~~into a construction agreement for these projects that shall provide,~~  
33 ~~at a minimum, performance expectations of the parties related to~~  
34 ~~the acquisition, design, construction, or renovation of the local jail~~  
35 ~~facility, guidelines and criteria for use and application of the~~  
36 ~~proceeds of revenue bonds, notes, or bond anticipation notes issued~~  
37 ~~by the SPWB to pay for the cost of the approved local jail facility~~  
38 ~~project and ongoing maintenance and staffing responsibilities for~~  
39 ~~the term of the financing.~~

~~(d) The construction agreement shall include a provision that the participating county agrees to indemnify, defend, and save harmless the State of California for any and all claims and losses arising out of the acquisition, design, and construction of the project. The construction agreement may also contain additional terms and conditions that facilitate the financing by the SPWB.~~

~~(e) The scope and cost of these approved local jail facility projects shall be subject to approval and administrative oversight by the SPWB.~~

~~(f) For purposes of compliance with the California Environmental Quality Act (Division 13 of the Public Resources Code (commencing at Section 210000)), neither the SPWB nor the CDCR shall be deemed a lead or responsible agency; the participating county is the lead agency.~~

~~SEC. 12. Section 15820.913 of the Government Code is amended to read:~~

~~15820.913. (a) The SPWB may issue up to four hundred seventy million dollars (\$470,000,000) in revenue bonds, notes, or bond anticipation notes, pursuant to Chapter 5 of Part 10b of Division 3 of Title 2 (commencing with Section 15830) to finance the acquisition, design, or construction, and a reasonable construction reserve, of approved local jail facilities described in Section 15820.911, and any additional amount authorized under Section 15849.6 to pay for the cost of financing.~~

~~(b) Proceeds from the revenue bonds, notes, or bond anticipation notes may be used to reimburse a participating county for the costs of acquisition, preliminary plans, working drawings, and construction for approved projects.~~

~~(c) Notwithstanding Section 13340, funds derived pursuant to this section and Section 15820.912 are continuously appropriated for purposes of this chapter.~~

~~SEC. 13. Section 15820.914 is added to the Government Code, to read:~~

~~15820.914. In support of this state funding, the Legislature finds and declares all of the following:~~

~~(a) The county jail system needs more capacity.~~

~~(b) Without increased capacity, public safety throughout the state may be jeopardized by offenders who either remain in the community or are released early due to lack of jail capacity.~~

1 ~~(e) By expanding jail capacity, this funding will serve a critical~~  
2 ~~state purpose by promoting public safety.~~

3 ~~(d) This purpose represents valuable consideration in exchange~~  
4 ~~for this state action.~~

5 SEC. 14. Section 7021 of the Penal Code is amended to read:

6 ~~7021. (a) The State Public Works Board may not release any~~  
7 ~~funds provided for projects in Section 15819.41 of the Government~~  
8 ~~Code or Section 6271.1, until a three-member panel, composed of~~  
9 ~~the State Auditor, the Inspector General, and an appointee of the~~  
10 ~~Judicial Council of California, verifies that the conditions outlined~~  
11 ~~in paragraphs (1) to (13), inclusive, have been met. The Legislative~~  
12 ~~Analyst shall provide information and input to the three-member~~  
13 ~~panel as it considers whether the conditions have been met.~~

14 ~~(1) At least 4,000 beds authorized in subdivision (a) of Section~~  
15 ~~15819.40 of the Government Code are under construction.~~

16 ~~(2) The first 4,000 beds authorized in subdivision (a) of Section~~  
17 ~~15819.40 of the Government Code include space and will provide~~  
18 ~~opportunities for rehabilitation services for inmates.~~

19 ~~(3) At least 2,000 of the beds authorized in subdivision (a) of~~  
20 ~~Section 6271 are under construction or sited.~~

21 ~~(4) At least 2,000 substance abuse treatment slots established~~  
22 ~~in Section 2694 have been established, with aftercare in the~~  
23 ~~community.~~

24 ~~(5) Prison institutional drug treatment slots have averaged at~~  
25 ~~least 75 percent participation over the previous six months.~~

26 ~~(6) The Department of Corrections and Rehabilitation has~~  
27 ~~implemented an inmate assessment at reception centers, pursuant~~  
28 ~~to Section 3020, and has used the assessment to assign inmates to~~  
29 ~~rehabilitation programs for at least six consecutive months.~~

30 ~~(7) The Department of Corrections and Rehabilitation has~~  
31 ~~completed the Inmate Treatment and Prison-to-Employment Plan,~~  
32 ~~pursuant to Section 3105.~~

33 ~~(8) At least 300 parolees are being served in day treatment or~~  
34 ~~crisis care services, pursuant to Section 3073.~~

35 ~~(9) The California Rehabilitation Oversight Board (C-ROB),~~  
36 ~~created pursuant to Section 6140, has been in operation for at least~~  
37 ~~one year, and is regularly reviewing the Department of Corrections~~  
38 ~~and Rehabilitation's programs. This condition may be waived if~~  
39 ~~the appointments to the C-ROB have not been made by the~~  
40 ~~Legislature.~~

1     ~~(10) The Department of Corrections and Rehabilitation has~~  
2     ~~implemented a plan to address management deficiencies, pursuant~~  
3     ~~to Section 2061, and at least 75 percent of management positions~~  
4     ~~have been filled for at least six months.~~

5     ~~(11) The Department of Corrections and Rehabilitation has~~  
6     ~~increased full-time participation in inmate academic and vocation~~  
7     ~~education programs by 10 percent from the levels of participation~~  
8     ~~on April 1, 2007.~~

9     ~~(12) The Department of Corrections and Rehabilitation has~~  
10    ~~developed and implemented a plan to obtain additional~~  
11    ~~rehabilitation services, pursuant to Section 2062, and the vacancy~~  
12    ~~rate for positions dedicated to rehabilitation and treatment services~~  
13    ~~in prisons and parole offices is no greater than the statewide~~  
14    ~~average vacancy rate for all state positions.~~

15    ~~(13) The Department of Corrections and Rehabilitation has~~  
16    ~~reviewed existing parole procedures.~~

17    ~~(b) The provisions of Section 15819.41 of the Government Code~~  
18    ~~and Section 6271.1 shall not authorize construction of facilities~~  
19    ~~until the three-member panel specified in subdivision (a) has~~  
20    ~~certified that the requirements of that subdivision have been met.~~  
21    ~~Those sections shall become inoperative on January 1, 2014. Any~~  
22    ~~projects already underway may continue, and funding for those~~  
23    ~~projects shall remain authorized in order to allow for the issuance~~  
24    ~~of bonds.~~

25    ~~(c) The requirements set forth in Section 7021 are contingent~~  
26    ~~upon the Legislature making funds available for the rehabilitation~~  
27    ~~programs set forth in the Public Safety and Offender Rehabilitation~~  
28    ~~Services Act of 2007.~~

29    ~~SEC. 15. Section 1970 of the Welfare and Institutions Code is~~  
30    ~~amended to read:~~

31    ~~1970. (a) For the purposes of this article, “participating county”~~  
32    ~~means any county, or regional consortium of counties, within the~~  
33    ~~state that has been certified to the board by the authority as having~~  
34    ~~satisfied all of the requirements set forth in Section 1975 for~~  
35    ~~financing a local youthful offender rehabilitative facility pursuant~~  
36    ~~to this article.~~

37    ~~(b) For purposes of this article, “board” means the State Public~~  
38    ~~Works Board, and “authority” means the Corrections Standards~~  
39    ~~Authority.~~

1     ~~SEC. 16. Section 1971 of the Welfare and Institutions Code is~~  
2     ~~amended to read:~~

3     ~~1971. (a) The Department of Corrections and Rehabilitation,~~  
4     ~~a participating county, and the board are authorized to acquire,~~  
5     ~~design, renovate, or construct a local youthful offender~~  
6     ~~rehabilitative facility approved by the authority pursuant to Section~~  
7     ~~1975, or a site or sites owned by, or subject to a lease or option to~~  
8     ~~purchase held by a participating county. The ownership interest~~  
9     ~~of a participating county in the site or sites for a local youthful~~  
10    ~~offender rehabilitative facility shall be determined by the board to~~  
11    ~~be adequate for purposes of its financing in order to be eligible~~  
12    ~~under this article.~~

13    ~~(b) Notwithstanding Section 15815 of the Government Code,~~  
14    ~~a participating county may acquire, design, renovate, or construct~~  
15    ~~the local youthful offender rehabilitative facility in accordance~~  
16    ~~with its local contracting authority. Notwithstanding Section 14951~~  
17    ~~of the Government Code, the participating county may assign an~~  
18    ~~inspector during the construction of the project.~~

19    ~~(c) The department, a participating county, and the board shall~~  
20    ~~enter a construction agreement for the project that shall provide,~~  
21    ~~at a minimum, all of the following:~~

22    ~~(1) Performance expectations of the parties related to the~~  
23    ~~acquisition, design, renovation, or construction of the local youthful~~  
24    ~~offender rehabilitative facility.~~

25    ~~(2) Guidelines and criteria for use and application of the~~  
26    ~~proceeds of revenue bonds, notes, or bond anticipation notes issued~~  
27    ~~by the board to pay for the cost of the approved local youthful~~  
28    ~~offender rehabilitative facility project.~~

29    ~~(3) Ongoing maintenance and staffing responsibilities for the~~  
30    ~~term of the financing.~~

31    ~~(d) The construction agreement shall include a provision that~~  
32    ~~the participating county agrees to indemnify, defend, and hold~~  
33    ~~harmless the State of California for any and all claims and losses~~  
34    ~~arising out of the acquisition, design, renovation, and construction~~  
35    ~~of the local youthful offender rehabilitative facility. The~~  
36    ~~construction agreement may also contain additional terms and~~  
37    ~~conditions that facilitate the financing by the board.~~

38    ~~(e) The scope and cost of the approved local youthful offender~~  
39    ~~rehabilitative facility project shall be subject to approval and~~  
40    ~~administrative oversight by the board.~~

1     ~~(f) For purposes of compliance with the California~~  
2     ~~Environmental Quality Act (Division 13 (commencing with Section~~  
3     ~~21000) of the Public Resources Code), neither the board nor the~~  
4     ~~department, shall be deemed a lead or responsible agency. The~~  
5     ~~participating county shall be the lead agency.~~

6     ~~SEC. 17. Section 1972 of the Welfare and Institutions Code is~~  
7     ~~amended to read:~~

8     ~~1972. Upon the receipt by a participating county of responsive~~  
9     ~~construction bids, the board and the department may borrow funds~~  
10    ~~for project costs after the project has been certified pursuant to~~  
11    ~~Section 1970 from the Pooled Money Investment Account pursuant~~  
12    ~~to Sections 16312 and 16313 of the Government Code, or from~~  
13    ~~any other appropriate source. In the event any of the revenue bonds,~~  
14    ~~notes, or bond anticipation notes authorized by this chapter are not~~  
15    ~~sold, the department shall commit a sufficient amount of its support~~  
16    ~~appropriation to repay any loans made for an approved project.~~

17    ~~SEC. 18. Section 1973 of the Welfare and Institutions Code is~~  
18    ~~amended to read:~~

19    ~~1973. (a) The board may issue up to one hundred million~~  
20    ~~dollars (\$100,000,000) in revenue bonds, notes, or bond~~  
21    ~~anticipation notes, pursuant to Chapter 5 (commencing with Section~~  
22    ~~15830) of Part 10b of Division 3 of Title 2 of the Government~~  
23    ~~Code to finance the acquisition, design, renovation, or construction,~~  
24    ~~and a reasonable construction reserve, of approved local youthful~~  
25    ~~offender rehabilitative facilities described in Section 1971, and~~  
26    ~~any additional amount authorized under Section 15849.6 of the~~  
27    ~~Government Code to pay for the cost of financing.~~

28    ~~(b) Proceeds from the revenue bonds, notes, or bond anticipation~~  
29    ~~notes may be utilized to reimburse a participating county for the~~  
30    ~~costs of acquisition, preliminary plans, working drawings, and~~  
31    ~~construction for approved projects.~~

32    ~~(c) Notwithstanding Section 13340 of the Government Code,~~  
33    ~~funds derived pursuant to this section are continuously appropriated~~  
34    ~~for purposes of this article.~~

35    ~~(d) This section shall become inoperative on June 30, 2017. No~~  
36    ~~projects shall be commenced after that date, but projects already~~  
37    ~~commenced may be completed and financed through the issuance~~  
38    ~~of bonds pursuant to this article.~~

39    ~~SEC. 19. Section 1975 of the Welfare and Institutions Code is~~  
40    ~~amended to read:~~



1     ~~1975.—(a) The authority shall adhere to its duly adopted~~  
2 ~~regulations for the approval or disapproval of local youthful~~  
3 ~~offender rehabilitative facilities. The authority also shall consider~~  
4 ~~cost-effectiveness in determining approval or disapproval. No state~~  
5 ~~moneys shall be encumbered in contracts let by a participating~~  
6 ~~county until final architectural plans and specifications have been~~  
7 ~~approved by the authority, and subsequent construction bids have~~  
8 ~~been received. The review and approval of plans, specifications;~~  
9 ~~or other documents by the authority are for the purpose of ensuring~~  
10 ~~proper administration of moneys and determination of whether the~~  
11 ~~project specifications comply with law and regulation. The~~  
12 ~~authority may require changes in construction materials to enhance~~  
13 ~~safety and security if materials proposed at the time of final plans~~  
14 ~~and specifications are not essential and customary as used statewide~~  
15 ~~for facilities of the same security level. Participating counties are~~  
16 ~~responsible for the acquisition, design, renovation, construction,~~  
17 ~~staffing, operation, repair, and maintenance of the project.~~

18     ~~(b) The authority shall establish minimum standards and funding~~  
19 ~~schedules and procedures, which shall take into consideration, but~~  
20 ~~not be limited to, all of the following:~~

21     ~~(1) Certification by a participating county of project site control~~  
22 ~~through either fee simple ownership of the site or comparable~~  
23 ~~long-term possession of the site, and right of access to the project~~  
24 ~~sufficient to ensure undisturbed use and possession.~~

25     ~~(2) Documentation of need for the project.~~

26     ~~(3) A written project proposal.~~

27     ~~(4) Submittal of a staffing plan for the project, including~~  
28 ~~operational cost projections and documentation that the local~~  
29 ~~youthful offender rehabilitative facility will be able to be safety~~  
30 ~~staffed and operated within 90 days of completion.~~

31     ~~(5) Submittal of architectural drawings, which shall be approved~~  
32 ~~by the authority for compliance with minimum youthful offender~~  
33 ~~rehabilitation facility standards and which also shall be approved~~  
34 ~~by the State Fire Marshal for compliance with fire safety and life~~  
35 ~~safety requirements.~~

36     ~~(6) Documentation evidencing the filing by a participating~~  
37 ~~county of a final notice of determination on its environmental~~  
38 ~~impact report.~~

39     ~~(7) Provisions intended to maintain the tax-exempt status of the~~  
40 ~~bonds, notes, or bond anticipation notes issued by the board.~~

1     ~~SEC. 20. Section 1977 is added to the Welfare and Institutions~~  
2     ~~Code, to read:~~

3     ~~1977. In support of state funding authorized by this article, the~~  
4     ~~Legislature finds and declares all of the following:~~

5     ~~(a) Population levels in local juvenile offender facilities across~~  
6     ~~the state have dramatically increased.~~

7     ~~(b) Although capacity in local juvenile offender rehabilitation~~  
8     ~~and incarceration facilities has been added during the last decade,~~  
9     ~~those facilities still face capacity problems, and aging facilities~~  
10    ~~need to be repaired or replaced.~~

11    ~~(c) Insufficient capacity at local juvenile offender rehabilitation~~  
12    ~~and incarceration facilities may create risks to the public safety as~~  
13    ~~well as a loss to the state of potentially productive members of~~  
14    ~~society.~~

15    ~~(d) By expanding local juvenile offender rehabilitation and~~  
16    ~~incarceration facilities, this funding will serve a critical state~~  
17    ~~purpose, which purpose represents valuable consideration in~~  
18    ~~exchange for this state action.~~

19    ~~SEC. 21.~~

20    ~~SEC. 353. This act addresses the fiscal emergency declared by~~  
21    ~~the Governor by proclamation on December 19, 2008, pursuant~~  
22    ~~to subdivision (f) of Section 10 of Article IV of the California~~  
23    ~~Constitution.~~

24    ~~SEC. 22. This act is an urgency statute necessary for the~~  
25    ~~immediate preservation of the public peace, health, or safety within~~  
26    ~~the meaning of Article IV of the Constitution and shall go into~~  
27    ~~immediate effect. The facts constituting the necessity are:~~

28    ~~In order to make the necessary statutory changes to implement~~  
29    ~~the Budget Act of 2008 at the earliest time possible, it is necessary~~  
30    ~~that this act take effect immediately.~~

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